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TRANSCRIPT OF RECORD.

151

SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 304

JOHN ROLAND AND J. L. HORNSBY, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JANUARY 15, 1869.

23 How. 918.19

Rico's Case 2 Wall

SUPREME COURT OF THE UNITED STATES.

No. 431.

JOHN ROLAND AND J. L. HORNSBY, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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1 OFFICE OF THE BOARD OF COMMISSIONERS
To Ascertain and Settle the Private Land Claims in the State of California.

Be it remembered, that on this sixth day of July, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, setting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of John Roland, et al., for the place named "Las Huecos," was presented, and ordered to be filed and docketed with No. 282 and is as follows, to wit: (Vide, page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *October 18th*, 1852.

In case No. 282, John Roland and J. L. Harnsley, for the place named "Las Huecos," the deposition of Ygnacio del Valle, a witness in behalf of the claimants, taken before Commissioner Hiland Hale, with document marked H. H. M., and a translation thereof
2 marked "M," annexed thereto, was filed.
(Vide, page 4 of this transcript.)

SAN FRANCISCO, *Sept.* 21, 1853.

Case No. 282 called. On motion of the council for the claimants to the foot of the docket.

SAN FRANCISCO, *Sept.* 12, 1854.

Case No. 282, on motion of the counsel for the claimants with the consent of the U. S. law agent, was ordered to the foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *October 23d*, 1854.

In the same case the counsel for the claimants filed the following stipulation, to wit:
(Vide, page 23 of this transcript.)

SAN FRANCISCO, *October* 24, 1854.

Case No. 282 was submitted on briefs and taken under advisement by the board.

SAN FRANCISCO, *Oct.* 28, 1854.

In the same case the counsel for the claimants filed the following stipulation, to wit:
3 (Vide, page 23 of this transcript.)

SAN FRANCISCO, *November* 21, 1854.

In the same case Commisioner R. Aug. Thompson delivered the opinion of the board rejecting the claim.

(Vide, page 67 of this transcript, and the following order was made to wit: Vide, page 69 of this transcript.)

Petition.

To the commissioners appointed to ascertain and settle private land claims in the State of California:

John Roland and J. L. Harnsley present and pray the confirmation of their title to a tract of land containing nine leagues, lying in the county of Santa Clara, known and described as los huecos o sobrantes de terrenos que resultan en el parge de Las Animas y el rancho
4 de Pala, pertenecientes a los menores Don Carlos Neivce y Jose de Jesus Bernal, abrazando las terras del cerro Colorado hacia las caidas del Valley, the vacant or surplus lands which remain in the place called Las Animas, in the rancho de Pala, belonging toCharles Weber and Jose de Jesus Bernal, including the lands of the Red mountain towards the valley, which was granted on the 6th day of May, 1846, by Pio Pico, then governor of California, under authority of the laws and reglations then in force, to Louis Arenas and the petitioner, John Roland, jointly, and the undivided interest of Louis Arenas, which was sold and conveyed by him to J. M. Jones, by deed dated the second of October, 1850, and by said J. M. Jones who is now deceased, devised to the petitioner J. L. Hornsbey, by last will and testament bearing date the 4th of September, 1851, each of the two petitioners now claiming an equal undivided interest to the land. That they know of no other claim.

In support of their claim they refer to the copy of the es-
5 pediente certified by the surveyor general of the United States for the State California, marked A, the translation thereof marked B, the copy of the grant marked A and a translation thereof marked D, all of which are herewith filed and to such other evidence as they may hereafter present.

A. P. CRITTENDEN,
Attorney for Claimants.

Filed in office July 6th, 1852.

GEO. FISHER, *Secretary.*

Recorded: Record of petitioners, vol. 1st, page 60.
GEORGE FISHER, *Sec'y.*

Deposition of Ygnacio del Valle.

OFFICE OF THE UNITED STATES LAND COMMISSIONER,
Los Angeles, October 18th 1852.

On this 18th day of October, 1852, before me Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, personally appeared Ygnacio del Valle, a witness

6 produced on behalf of John Roland and J. L. Hornsbey, claimants in the case which is numbered 282 on the docket of the said commissioners who, having been duly sworn, testified as follows:

The associate law agent was notified and attended.

Question first. What is your name and age and where do you reside?

Answer. My name is Ygnacio del Valle; I am forty-four years of age, and reside in Los Angeles, California.

Question second. Are you acquainted with the signatures of Pio Pico and Jose Martius Moreno?

Answer. I am.

Question third. Examine the document marked Exhibit M, being the original grant now shown you, and which is filed as part of your deposition and say whether or not the signatures of said persons to the grant and that of Moreno to the certificate which follows it are genuine.

Answer. I have examined the document referred to—the
7 said signatures are genuine.

Question fourth. Who was governor of California on the 6th day of May, 1846? Who was acting at Los Angeles at that time as secretary?

Answer. Pio Pico was governor and Jose Martius Moreno was acting as secretary.

IGNACIO DEL VALLE.

Sworn and subscribed before me.

HILAND HALL, *Commissioner.*

Filed in office, October 18, 1852.

GEORGE FISHER, *Sec'y.*

Recorded in Evidence B, volume 2, page 94.

GEORGE FISHER, *Secretary.*

1846. [15 D. V.

Los huecos o sobrantes del terreno que resultan en el parage de Las Animas y rancho de Pala concedidos a Luis Atrenas y Juan Roland.

No. 587.

8 1846. [15 D. K.

Los huecos o sobrantes del terreno que resultan en el parage de Las Animas y rancho de Pala concedidos a Luis Arenas y Juan Roland.

No. 581.

Estiendese el decreto de concesion y librese el titulo a los interesados para su resguardo.

Gobierno del Departamento de Californias.

ANGELES, *Mayo, 5o de* 1846.

E. S'or gobernador Luis Arenas y Juan Roland, vecinos de este departamento ante V. E. con el debido respeto manifiestan que teniendo ambos algunos vienes de campo unico jiro de que subsisten sus familias y careciendo de terreno en que poner los para su conversacion y fomento ocurran a la bondad de V. E. implicandole se digne concederles los huecos que resulten en los parages de Las Animas y canada de Pala, pertenecientes a Don Carlos Wibar y Jose de Jesus Bernal en la jurisdiccion del pueblo de San Jose Guadalupe, abranzando las tierras del cerro colorado hacia las caidas del valle, en la misma jurisdiccion hasta el completo del nueve sitios que consideran soficientes para el fin indicado cuyo diseno ofrecen presentar a V. E. oportunamente. Por tanto A. V. E. resteran se digne tener en consideracion lo espuesto y mandar se les estienda el titulo correspondiente de cuya gracia lo viveran siempre reconocido. Sirviendose admitir esto en papel comun por falta de sellado.

Angeles, Mayo 5 de 1846.

LUIS ARENAS.
JOHN ROLAND.

Angeles, Mayo 6, de 1847.
3, S. D. K.

Vista la solicitud con que da principio este espediente con todo lo demas que se tuvo presente y ver convino ; usando de las facultades con que me hallo autorizado por el supremo gobierno a nombre de la nacion Mejicana he venido por las presentes letras en declarar a los Senores D'n Luis Arenas y D'n Juan Roland, duenos en propiedad de los terrenos sobrantes que hay en el terreno de Las Animas y rancho de Pala, hasta el numero de nueve sitios de ganado mayor con el concepto de que estos sitios de ganado mayor estan fuera de las medidas del Senor Don Carlos Wivar y Don Jose de Jesus Bernal.

Librese les en consecuencia el titulo que les asegure su propiedad y reservese el espediente para someterlo a la aprovacion de la ex'ma asamblea departamental, Pio Pico, gobernador constitucional del departam'to de California, asi lo mando decreto y firmo. Doy fee.

PIO PICO.
JOSE MATIAS MORENO,
S'o Into.

4, S. D. K.

Pio Pico, gobernador constitucional departamento de las Californias:

Por cuanto los S'res D. Luis Arenas y D. Juan Roland, han solicitado para su beneficio personal y el de sus familias los huecos o sobrantes de terreno que resultan en el parage de Las Animas y el rancho de Pala en la jurisdiccion del pueblo de San Jose Guadalupe pertenecientes a los S'res Don Carlos Wivar y D. Jose de Jesus Bernal abrazando las tierras del cerro colorado hacia las caidas del valle,
hasta el completo de nueve sitios, practicadas previamente
11 las averiguaciones que han sido presisas con todo lo demas
que se tuvo presente y ver conveno ho venido por decreto de este dia en uso de las facultades con que me hallo autorisado por el supremo gobierno a nombre de la nacion Mejicana declarar como declaro a los espresados duenos en propiedad de los huecos o terreno sobrante en los ranchos antedichos y las tierras del cerro colorado hacia las caldas del valle con arreglo a la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, a reserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

6, S. D. K.

1o. Podran cercarlo sin perjudicar las travesias caminos y servidumbres: lo disfrutaran libre y esclusivamente destinandolo al uso que mejor les convenga.

2o. Solicitaran del juez respectivo les de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas mohoneras.

3o. El terreno de que se hace donacion es puramente de nueve
citios de ganado mayor y esta hubicado en los sobrantes o
12 huecos que hay en los ranchos de los S. S. D. Carlos Wivar y
D. Jose de Jesus Bernal, abrasando las tierras de el cerro colorado hacia las caidas del valle. El juez que les de posecion lo hara medir con arreglo a ordenanza a vista del diseno que presentaran los interesados. En consecuencia mando que teniendose el presente titulo por firme y valedero se torre razon de el en el libro respectivo y se entregue a los interesados para su resguardo y demas fines. Dado en la ciudad de Los Angeles en papel comun por no haber de sellado a seis de Mayo de mil ochociento cuarenta y seis.

PIO PICO.
J. MA. MORENO, *S'rio Into.*

7, S. D. K.

13 *Translation of expediente.*

Gov't of the Dep't of the Californias.

To his excellency the Governor:

Louis Arenas and John Roland, residents of this department, respectfully represent to your excellency that they both having some cattle on which their families subsist, and wanting land on which to put them for their preservation and support, look to the goodness of

your excellency, praying that you will grant them the vacant lands which remain at the places called Las Animas and Canada de Pala, belonging to Don Carlos Wever and Jose de Jesus Bernal, in the jurisdiction of the Pueblo of San Jose Guadalupe, including the lands of the Cerro Colorado towards the ascent of the valley in the same jurisdiction to make up fully the extent of nine leagues, which they consider sufficient for the purpose referred to.

A map of which land they offer to present to your excellency at a convenient time. Wherefore they pray your excellency to take this into consideration and to order that the proper title be issued to them, for which favor they will always remain grateful. They ask that this be recorded in convenient paper for want of sealed.

14 Angeles, May 5th, 1846.

JOHN ROLAND.

Angeles, May 5th, 1846.

LUIS ARENAS.

Let the decree of concession be issued and the title be delivered to the parties interested for their protection,

PICO.

B.

Translation of espediente.

In view of the petition with which this expediente begins, and in the exercise of the powers with which I am invested by the supreme government in the name of the Mexican nation, I do by these presents, declare Luis Arenas and John Roland, owners of the surplus lands of the ranchos de Las Animas and Pala, to the number of nine leagues of the larger size, with the understanding that these leagues lie without the measurements of the lands of Charles Weber and Jose Jesus Bernal. Therefore let the title be issued which will secure to them the property, and let the espediente be retained to be submitted for approval to the departmental assembly. Pio Pico, constitutional governor of the department of the Californias, thus ordered, decreed and signed.

PIO PICO.

15 Jose Matias Moreno Lin Yerto Pio Pico, constitutional governor of the department of the Californias: Whereas Don Luis Arenas and Don Juan Roland have solicited for their personal benefit and that of their families, the vacant or surplus lands which remain in the place call Las Animas and in the rancho de Pala, in the jurisdiction of the Pueblo of San Jose de Guadalupe, belonging to Don Carlos Weber and Don Jose de Jesus Bernal, including the lands of the Cerro Colorado (Red Hill) towards the descent of the valley with the full quantity of nine leagues.

The necessary steps having been taken, and inquiries made, I have by decree of this day, in the exercise of the powers with which I am

invested by the supreme government in the name of the Mexican nation, declared, and do declare the said parties, owners in full propery of the vacant or surplus land of the said ranchos and the lands of the Cerro Colorado, towards the descent of the valley, in conformity with the law of the 18th of August, 1824, and the regulation
16 of the 21st of November, 1828, subject to the approval of the departmental assembly, and under the following conditions:

1st. They may enclose it without injuring the passes, roads and servitudes, and may enjoy it fully and exclusively, appropriating it to such use as may suit them.

2nd. They shall solicit the proper judge to give them judicial possession by virtue of this decree, and he shall mark the boundaries with the proper land marks.

3d. The land hereby granted is nine leagues of the largest size, and is situated in the surplus or vacant lands of the ranchos of Don Carlos Weber and Don Jose de Jesus Bernal, including the lands of the Cerro Colorado towards the valley. The judge who shall give the possession, shall have it measured in conformity to law, in view of the map which will be presented by the parties interested.

Wherefore I order that this title being held firm and valid,
17 shall be registered in the proper book and delivered to the parties for their protection and other purposes.

Given in the city of Los Angeles on common paper, because there is none sealed, this 6th day of May, 1846.

PIO PICO.
JOSE MATIAS MORENO,
Lin Yerto.

Filed in office July 6th, 1852.

GEORGE FISHER, *Secretary.*

18 Pio Pico, Gobernador Constitucional del Departamento de Californias:

Por cuantos los Senores Don Luis Arenas y Don Juan Roland. han solicitado para su beneficio personal y el de sus familias los huecos o sobrantes de terrenos que resultan en el parage de Las Animas y el rancho de Pala en la jurisdiccion del pueblo de San Jose Guadalupe, pertenecientes a los S'res Don Carlos Wivar y Jose de Jesus Bernal, abrazando las tierras del cerro colorado hacia las caidas del valle hasta el completo de nueve sitios practicadas previamente las avereguaciones que han sido necesarias, can todo lo demas que se tuvo presente y ver convino, he venido por decreto de este dia en uso de las facultades con que me hallo autorizado per el supremo gobierno a nombre de la nacion Mejicana declarar como declaro a los Senores espresados duenos en propiedad de los huecos o terreno sobrante en los ranchos ante dichos y las tierras del cerro colorado hacia las caldas del valle con arreglo a la ley de 18 de Agosto, de 1824,
19 y reglamento de 21 de Noviembre, de 1828, a reserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1r. Podran seocarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutaran libre y esclusivamente destinandolo al uso o cultivo que mas les convenga.

2r. Solicitaran del Juez respectivo les de la pocesion juridica en viotud de este despacho por el cual se demarcaran los linderos con las respectivas mojoneras.

3a. El terreno de que se les hace donacion es puramente de nueve citios de garnado mayor y esta hubicado en los sobrantes o huecos que hay en los ranchos de los Senores Don Carlos Wivar y Don Jose de Jesus Bernal.

El Juez que diere la pocesion lo hara medir con arreglo a ordenanza a vista del diseno que presentaran los interesados.

En consecuencia manda que teniendose el presente titulo por firme y valedero se tome razon de el en el libro que corresponde y se entregue a los interesados para su resguardo y demas fines. Dado en
20 la ciudad de Los Angeles en papel comun por no haber de sellado a seis de Mayo de mil ochocientos cuarenta y seis.

PIO PICO,
JOSE MATHIAS MORENO,
S'rio Int'o.

Queda tomada razon de este superior despacho en el libro respectivo.

MORENO.

Endorsed: Filed in office, Oct'r 18th, 1852.

GEO. FISHER, *Sec'y.*

21 *Translation of original grant marked ex't M.*

Pio Pico, constitutional governor of the department of the Californias:

Gobierno del Dep. de Californias.

Whereas Don Louis Arenas and Don Juan Roland have solicited for their personal benefit, and that of their families, the vacant spaces or surplus lands which remain in the place called Las Animas and the rancho of Pala, in the jurisdiction of the pueblo of San Jose Guadalupe, belonging to Don Carlos Weber and Jose Jesus Bernal, including the lands of the Cerro Colorado, (Red mountain,) towards the slope (caidas) of the valley, amounting to nine leagues.

The necessary inquiries having been made, and considering everything else presented and proper to be considered, in the exercise of the powers with which I am invested by the supreme government, in the name of the Mexican nation, I have determined to declare, and do declare, the said persons owners in property of the vacant or surplus lands of the said rancho and the lands of the Cerro
22 Colorado, (Red mountain.) towards the slope of the valley, in conformity with the law of the 18th of August, 1824, and the regulation of the 21st of November, 1828, with the reservation of

the approval of the departmental assembly, and under the following conditions:

1st. They may enclose it without injuring the crosses, roads and servitudes; they may enjoy it fully and exclusively, applying it to the use and cultivation which may best suit them.

2nd. They shall solicit the proper judge to give them judicial possession, in virtue of this decree, by whom the boundaries shall be marked by the proper monuments.

3d. The land, of which a donation is made to them, is nine leagues, (de ganado mayor,) and is situated in the surplus or vacant lands of Don Carlos Weber and Don Jose de Jesus Bernal. The judge who may give the possession shall have it measured in conformity with the ordinance, in view of the diseno (map) which the parties will present.

23 Wherefore I order that this title, being held firm and valid, be recorded in the proper book, and be delivered to the parties for their security and other purposes.

Given at the city of Los Angeles, on common paper, there being none sealed, the 6th of May, 1846.

PIO PICO.
JOSE MATIAS MORENO,
Secretary ad interim.

This superior decree is recorded in the proper book.

MORENO.

Annexed to the deposition of Ygnacio del Valle, October 18, 1852. Filed in office, October 18, 1852.

GEO. FISHER, *Secretary.*

24 *Certified copy of will of Mr. Jones, and probate.*

I, James M. Jones, by the grace of God of sound discretion, by this my last will and testament, do will and decree unto Dr. J. L. Hornsby, of Plaquemine, La., all my real and personal property wherever situated, in trust for the use of his children, Joseph Dashall and Arabella L. Hornsby, in equal portions; or if either should die before majority, then for the sole use of the survivor; provided, however, that the said J. L. Hornsby shall have full power to sell said property, or dispose of the same as he may deem proper, and use the funds according to his discretion, as he thinks may best accord with the interests of the said children.

And the portion of the said J. D. Hornsby shall be given him, deducting losses, expenses, &c., when he shall be twenty-one years of age; and that of Arabella L. Hornsby, what remains after said deduction, shall be given her at the age of eighteen years, or sooner if she marry with the consent of her father or guardian.

The above disposition is made subject to a deduction of ten per cent., which the said Hornsby shall take from the cash value of my property and apply towards building a tomb for the body of my

mother, provided the cash value of my property shall ex-
25 ceed five thousand dollars. I appoint J. H. Melone or J. J. Kindrict in the alternative to take charge of and administer upon my estate, until the same can be taken possession of by said J. L. Hornsby, but they shall deliver to him possession thereof upon demand.

I hereby revoke and annul all testaments made by me anterior hereto. Made at Iberville parish, Louisiana, this fourth day of September, eighteen hundred and fifty-one.

JAMES M. JONES.

Attest:
H. H. TAYLOR.
PAUL DEVLINEX.

STATE OF LOUISIANA, *Parish of Iberville:*

Before me, Louis Petit, recorder and notary in and for the parish of Iberville, State of Louisiana, came and appeared James M. Jones, esquire, personally known to me as being the same person who has executed and signed and sealed the within instrument purporting to be his last will and testament, who acknowledged that he executed and signed the same of his own free will and accord,
26 and for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at the parish of Iberville, this fourth day of September, in the year of our Lord one thousand eight hundred and fifty-one.

[SEAL.] L. PETIT,
Recorder and Notary Public.

STATE OF LOUISIANA, *Parish of Iberville:*

6TH JUDICIAL DISTRICT COURT, CLERK'S OFFICE.

I, Paul Devlinex, clerk of the said court in and for said parish and State, do hereby certify that L. Petit, whose name is subscribed to the foregoing acknowledgment, is and was at the time of signing the same duly sworn and commissioned recorder and ex officio notary public in and for the parish of Iberville, State aforesaid, and that to his acts as such full faith and credit are due and owing.

27 In testimony whereof I have hereunto set my hand and the seal of said court, at the parish and State aforesaid, this 4th day of September, in the year of our Lord eighteen hundred and fifty-one.

[SEAL.] PAUL DEVLINEX, *Clerk.*

Filed December 17th, 1851.

H. C. MELONE, *Clerk.*

C. T. Ryland personally appeared in open court, and being sworn, said that he knew James M. Jones, deceased; that the will herein purporting to be the last will and testament of James M. Jones, de-

deceased, is in the handwriting of the said Jones, deceased; that he knows his handwriting well, having often seen him write, and that the signature to said will he believes to be genuine, and that he saw him frequently during the months of October, November, and
28 the first part of the month of December, and that the said Jones, deceased, was, during that time, of sound mind and disposing memory; that he saw him but a few days before his death, and whilst on his death-bed; that he was then of perfectly sound mind and memory.

C. T. RYLAND.

John H. Moore, being duly sworn, says that he is well acquainted with the handwriting of James M. Jones, deceased, having often seen it and seen him write, and from his knowledge of his writing he believes that the will herein to be in the handwriting of James M. Jones, deceased, and that the signature thereto is his signature; that he saw him frequently prior and subsequent to the date of his will, and believes him to have been of sound and disposing mind.

JOHN H. MOORE.

H. C. Melone, being sworn, says that the deceased, James M. Jones, delivered to him the will now here in court to be probated, in the latter part of October, 1851, or the first part of November of the same year, and that he at the time of delivering to him, by the said Jones, deceased, was of a sound and
29 disposing mind.

H. C. MELONE.

I, J. W. Redman, county judge and ex officio Probate Judge of Santa Clara county, certify that the above-named will and testament of James M. Jones, deceased, was this day produced in open court before me, and the above testimony taken and subscribed in open court.

J. W. REDMAN,
Ex officio Probate Judge of Santa Clara County.

It is therefore ordered that said will be probated and recorded according to law.

J. W. REDMAN,
Probate Judge.

Be it remembered that at a regular term of the Probate Court of Santa Clara county, held in the court-house of said county, in the city of San Jose, on the 29th day of January, A. D. 1852, present: J. W. Redman, probate judge.

Among others the following orders were made, to wit: In
30 the matter of the estate of James M. Jones, deceased.

In this case H. C. Melone having filed the last will and testament of James M. Jones, deceased, for probation, and proof having been made of due notice given of said application, and the evi-

mother, provided the cash value of my property shall ex-
25 ceed five thousand dollars. I appoint J. H. Melone or J. J. Kindrict in the alternative to take charge of and administer upon my estate, until the same can be taken possession of by said J. L. Hornsby, but they shall deliver to him possession thereof upon demand.

I hereby revoke and annul all testaments made by me anterior hereto. Made at Iberville parish, Louisiana, this fourth day of September, eighteen hundred and fifty-one.

JAMES M. JONES.

Attest:
H. H. TAYLOR.
PAUL DEVLINEX.

STATE OF LOUISIANA, *Parish of Iberville:*

Before me, Louis Petit, recorder and notary in and for the parish of Iberville, State of Louisiana, came and appeared James M. Jones, esquire, personally known to me as being the same person who has executed and signed and sealed the within instrument purporting to be his last will and testament, who acknowledged that he executed and signed the same of his own free will and accord,
26 and for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at the parish of Iberville, this fourth day of September, in the year of our Lord one thousand eight hundred and fifty-one.

[SEAL.] L. PETIT,
Recorder and Notary Public.

STATE OF LOUISIANA, *Parish of Iberville:*

6TH JUDICIAL DISTRICT COURT, CLERK'S OFFICE.

I, Paul Devlinex, clerk of the said court in and for said parish and State, do hereby certify that L. Petit, whose name is subscribed to the foregoing acknowledgment, is and was at the time of signing the same duly sworn and commissioned recorder and ex officio notary public in and for the parish of Iberville, State aforesaid, and that to his acts as such full faith and credit are due and owing.

27 In testimony whereof I have hereunto set my hand and the seal of said court, at the parish and State aforesaid, this 4th day of September, in the year of our Lord eighteen hundred and fifty-one.

[SEAL.] PAUL DEVLINEX, *Clerk.*

Filed December 17th, 1851.

H. C. MELONE, *Clerk.*

C. T. Ryland personally appeared in open court, and being sworn, said that he knew James M. Jones, deceased; that the will herein purporting to be the last will and testament of James M. Jones, de-

eeased, is in the handwriting of the said Jones, deceased; that he knows his handwriting well, having often seen him write, and that the signature to said will he believes to be genuine, and that he saw him frequently during the months of October, November, and
28 the first part of the month of December, and that the said Jones, deceased, was, during that time, of sound mind and disposing memory; that he saw him but a few days before his death, and whilst on his death-bed; that he was then of perfectly sound mind and memory.

C. T. RYLAND.

John H. Moore, being duly sworn, says that he is well acquainted with the handwriting of James M. Jones, deceased, having often seen it and seen him write, and from his knowledge of his writing he believes that the will herein to be in the handwriting of James M. Jones, deceased, and that the signature thereto is his signature; that he saw him frequently prior and subsequent to the date of his will, and believes him to have been of sound and disposing mind.

JOHN H. MOORE.

H. C. Melone, being sworn, says that the deceased, James M. Jones, delivered to him the will now here in court to be probated, in the latter part of October, 1851, or the first part of November of the same year, and that he at the time of deliver-
29 ing to him, by the said Jones, deceased, was of a sound and disposing mind.

H. C. MELONE.

I, J. W. Redman, county judge and ex officio Probate Judge of Santa Clara county, certify that the above-named will and testament of James M. Jones, deceased, was this day produced in open court before me, and the above testimony taken and subscribed in open court.

J. W. REDMAN,
Ex officio Probate Judge of Santa Clara County.

It is therefore ordered that said will be probated and recorded according to law.

J. W. REDMAN,
Probate Judge.

Be it remembered that at a regular term of the Probate Court of Santa Clara county, held in the court-house of said county, in the city of San Jose, on the 29th day of January, A. D. 1852, present: J. W. Redman, probate judge.

Among others the following orders were made, to wit: In
30 the matter of the estate of James M. Jones, deceased.

In this case H. C. Melone having filed the last will and testament of James M. Jones, deceased, for probation, and proof having been made of due notice given of said application, and the evi-

dence of C. T. Ryland, John H. Moore and H. C. Melone, being heard, and no opposition being made, and the court being satisfied that said will had been regularly made, it is therefore ordered by the court, that said will be admitted, filed, recorded and confirmed as probated.

STATE OF CALIFORNIA, *County of Santa Clara*:

I, John B. Hinson, county clerk of Santa Clara county, ex officio clerk of the Probate Court of the said county, do hereby certify that the foregoing is a true and correct copy of the original will of James M. Jones, deceased, the testimony of the witnesses in relation thereto, the certificate of the proof thereof, and the order admitting
31 the same to probate as the same appears of record of the said Probate Court.

In testimony whereof, I hereunto set my hand and the seal of said court this 27th day of October, A. D. 1854.

[SEAL.] JOHN B. HINSON, *Clerk*,
By L. P. PECK,
Deputy Clerk.

Filed in office November 9th, 1854.
GEORGE FISHER, *Secretary*.

32 *Deed from Luis Arenas to Jas. M. Jones.*

Know all men by these presents, that I, Don Luis Arrenas, of San Jose, in consideration of the sum of eleven hundred dollars to me paid by James M. Jones, as hereinafter set forth, do hereby give, grant, bargain, sell and convey unto the said James L. Jones, his heirs and assigns the undivided half of a certain rancho situate in the county of Santa Clara, southeasterly from San Jose, being the same rancho or tract granted and deeded to said Don Luis Arenas and Don Juan Roland, jointly, by Don Pio Pico, governor of Alta California, at Los Angeles, in May 6th, 1846, and which is described in said deed: "Los Huecos o sobrantes de terrenos que resultan de Las Animas y el rancho de Pala en la jurisdiccion de pueblo de San Jose Guadalupe perteneciente a los senores Don Carlos Weber & Jose Jesus Bernal abrazando las terras del cerro colorado hacia las caidas del valle hasta el completo de nueve sitos." The residue or vacant space which remains from Las Animas, and the rancho de Pala, in the jurisdiction of the town of San Jose Guadalupe, belonging to Chas. Wever or (Weber) and Jose de Jesus Bernal, composing the lands of the Red mountain or high lands; thence decending towards the valley to the full complement of nine leagues. The
33 portion of said rancho or tract of which this conveyance is made, being the undivided half thereof, or four and one-half leagues more or less, with all the rights, privileges and appurtenances of water, woods, grazing, habitation, mines and minerals, or other privileges whatever thereunto belonging; to have and to hold the same unto the said James L. Jones, his heirs and assigns in full

ownership and possession forever: provided, however, that said Don Luis shall have, during the space of two years from this date, the personal and non-transferable right to go upon the said tract or rancho, and unto any one placer mine which the said Arrenas may hereafter discover, but said right and privileges of working shall extend to but one placer, and said working shall not continue more than two years from this date, nor shall the right thereof be transferred in any manner.

The consideration of the above sale is the sum of six hundred cash in hand paid to the Don Luis Arrenas, the receipt whereof is hereby acknowledged, and the further sum of five hundred dollars, being the fee agreed to be paid by the said Arrenas to the said Jones for legal services for settling and attending to the business of Don Luis Arrenas.

34 And should the said tract be worth more than the said sum of eleven hundred dollars, then the said Luis Arrenas hereby makes full and free donation and gift of the overplus to the James M. Jones, his heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal at San Jose this 2d day of October, 1850.

LUIS ARRENAS.

Signed, sealed and delivered in the presence of—
R. A. REDMAN.

STATE OF CALIFORNIA, *County of Santa Clara:*

On the 2d day of October, A. D. 1850, personally appeared before me R. A. Redman, notary public in and for the State and county aforesaid, Luis Arrenas, personally known to me to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein specified.

In testimoniam veritatis,

R. A. REDMOND,
Notary Public.

Filed 7¾ o'clock, a. m., 3d Oct. 1850.

J. T. RICHARDSON,
Recorder Santa Clara County.

35 Recorded in Book of Deeds B, pages 87 and 88.

J. T. RICHARDSON,
Recorder S. C. Co.

Filed in office September 19th, 1853.

GEORGE FISHER,
Secretary.

36 *Stipulation.*

JOHN ROLAND AND J. L. HORNSBY
vs.
THE UNITED STATES.

It is stipulated that all papers filed and testimony taken and to be taken in the cases, number 333, Charles M. Weber, claimant, and

number 617, Jose de Jesus Bernal et als. claimants, except mesne conveyances and testimony taken to prove such conveyances, shall be considered as taken and filed in this case, number 282, and shall form part of the record herein, so far as the same may be legal evidence.

October 18th, 1854.

J. H. McKUNE,
United States Law Agent.
A. L. CRITTENDEN,
Att'y for Claimants.

Filed in office October 23d, 1854.

GEORGE FISHER,
Secretary.

Recorded in Journal, volume 4, page 80.

GEORGE FISHER,
Secretary.

Stipulation.

JOHN ROLAND AND J. L. HORNSBY
vs.
THE UNITED STATES. } Number 282.

37 It is stipulated that the claimants have further time till the 10th of November next to file their brief and the certified copy of the will of J. M. Jones, deceased, and the decree admitting it to probate.

October 27th, 1854.

J. H. McKUNE,
United States Law Agent.

Filed in office October 28th, 1854.

GEORGE FISHER,
Secretary.

Recorded in Journal, volume 4, page 92.

GEORGE FISHER,
Secretary.

Petition.

To the honorable commissioners to settle private land claims in California:

The petitioner, Charles M. Weber, respectfully shows that on the 17th day of August, A. D. 1839, Manuel Jimeno Casurin, governor of California, by virtue of authority in him vested, granted to Tomas Boun, the tract of land called Canada de San Felipe y Las Animas, situate in the present county of Santa Clara, containing two
38 sitios de Ganado Major, a little more or less, as shown in the map and described in the title and accompanying papers, all of which is shown by the original espediente, a certified copy of which is submitted herewith, marked A, with a translation marked B.

The petitioner also submits herewith a copy of the original title marked "C," with a translation marked "D."

That on the 7th day of October, A. D. 1842, sold and conveyed said tract of land to Francisco Garcia and Carlos Moreno, a copy of which public act of conveyance is submitted herewith, marked E, with a translation marked F.

That on the 10th day of November, A. D. 1845, the said Garcia and Moreno, sold and conveyed the said tract of land to Charles Marion Weber, a copy of which conveyance is submitted herewith, marked F.

It is also shown by the espediente, a certified copy of which is submitted herewith as aforesaid, that the said grant to Tomas
39 Brown was duly approved by the departmental junta on the 22nd day of May, 1840.

The petitioner also submits herewith a copy of certain judicial proceedings before the supreme tribunal of California, fully establishing the validity of the aforesaid grant marked I, into a translation marked J.

The petitioner also represents that the said land has not been surveyed by the surveyor general of California, but that its boundaries are fully defined in the grant and accompanying papers, and are well known.

That the petitioner and that under whom he holds have been for more than two years, and the petitioner now is, in the possession and occupation of the said tract of land.

That he knows of no conflicting claim. That he relies for confirmation of title upon the original documents, copies of which are submitted herewith, upon the records and minutes in the archives now in charge of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

40 Wherefore he prays the commissioners to confirm to him the tract of land aforesaid.

By his attorneys.

HALECK, PEACHY & BILLINGS.

Filed in office September 11th, 1852.

GEORGE FISHER,
Secretary.

Recorded in Record of Petitions, vol. 1, pages 231, 232, and 233.

GEORGE FISHER,
Secretary.

Deposition of Pablo de la Guerra.

OFFICE OF THE CALIFORNIA LAND COMMISSION,
Los Angeles, September 10th, 1852.

On this day before me Harry J. Thornton, one of the commissioners to ascertain and settle private land claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimant, Charles M. Weber, whose petition is No. 333 on the docket of the

commission and was duly sworn, his evidence being given in English.

The law agent was notified and attended.

In answer to questions propounded by claimant's counsel the
41 witness testified as follows:

Question. What is your name, age and place of residence?

Answer. My name is Pablo de la Guerra; my age, is about 32 years. I reside in Santa Barbara, and have lived in California all my life.

2 question. Examine the papers before you marked No. 6 and filed with this deposition, and say if the signatures are genuine and the documents original and genuine.

Answer. I am acquainted with the signatures of Manuel Jimmeno Francisco de Arce, Manuel Micheltoreno, Jose Ma. Castanaris, Antonio Maria Pico, and Juan Malurin. Their signatures to these documents are genuine, and the documents themselves are, to the best of my belief, genuine and original.

PABLO DE LA GUERRA.

U. S. Law Agent present.

Sworn to and subscribed before me this 10 September, 1852.

HENRY J. THORNTON,
Commissioner, &c.

42 Filed in office September 11, 1852.

GEORGE FISHER, *Secretary.*

Recorded in evidence b. vol. 2, page 14.

GEORGE FISHER, *Secretary.*

Deposition of Antonio Ma. Pico.

SAN FRANCISCO, *January 8th*, 1853.

On this day, before Commissioner Harry J. Thornton, came Antonio Maria Pico, a witness in behalf of the claimant, C. M. Weber, petitioner No. 333, and was duly sworn, his evidence being interpreted by the secretary.

The United States associate law agent was present.

My name is Antonio Maria Pico. My age is 44 years. I reside in San Jose, and have lived in California all my life. I know the signatures of Ysidro Guiller, Jose Garcia, Tomas G. Boune, Bruno Sato, Francisco Garcia, Carlos Mano; their signatures to the papers before
me marked No. 1 are genuine, and the signatures of Antonio
43 Ma. Pico to the said papers, as alcalde, is my own signature.

Garcia occupied this rancho in 1842, and afterwards until he sold it to Weber, who has occupied it ever since with his cattle and servants and a house.

ANTONIO MA. PICO.

U. S. Law Agent present.

Sworn to and subscribed before me this 8th of January, 1853.
HARRY J. THORNTON,
Commissioner.

Filed in office January 8th, 1853.
GEORGE FISHER, *Secretary.*

Recorded in evidence b. vol. 2, page 429.
GEORGE FISHER, *Secretary.*

44 1 S. D. K.—*Juzgado Constitu'l dr S. Jose de Alvarado, Ano de* 1839.—*Espediente.*

Promovido por D. Tomas Boun y en solicitud del parage nombrado S. Felipe y Las Animas.

168.

2. S. D. K.—Monterey, 18 de Mayo, de 1839. Informe el alcalde del pueblo si el terreno que se solicita es baldio y si no pertenece algun particular mision o pueblo.

CASTRO.

S'or Prefecto Tomas Boun casado con mejicana y Natan Beli residente en este pais, ante V. S. con el mayor respeto nos presentamos y decimos que poseemos el numero de dos cabezas, de ganado vacuno para cuya conservacion y aumento carecemos de un terreno aproposito y hallandose valdio el parage nombrado, S. Felipe y Las Animas situado al oriente de este lugar suplicamos se digne V. S. adjudicarnosle.

Este terreno no pertenece a ninguno individuo. corporacion ni mision por lo q'l rendidamente A. V. S suplicamos se sirva
45 de proveer como llevamos pedido en lo que recibiremos gracia, &c., no yendo este en papel sellado por no haberlo.

Pueblo de S. Jose de Alvarado y Mayo 14, de 1839.
TOMAS G. BOUN.
NATAN DELI.

SENOR PREFECTO: Por los informes que he tomado, a cerca del terreno q'l se se pretende, resulta ser valdio y no pretenece a ningan particular ni mision, ignorandose si correspondera a los ejidos y propios de este poblacion, cuando se le senalen, pues dictara cuatro leguas al S. E. de ella; con lo que he dado cumplimiento (3. S. D. K.) al decreto de V. S. que antecede.

S. Jose de Alvarado 23 de Mayo, de 1839.
JOSE NORIEGA.

El terreno que solicitan los interesados es absolutamente valdio y puede consederseles sin perjuicio de ningun particular ni pueblo advirtiendo q'l los solicitantes no tienen carta de naturalizacion, pero

tienen en el departamento ocho anos de residencia y el primero
46 es casado con mejicana, en cuyo tiempo han adquerido honradamente su subsistencia y el numero de bienes que manifiestan en su representacion.

S. Juan de Castro 23, de 1839.

JOSE CASTRO.

Espectt'e continued, 4 *S. D. K.*

MONTEREY, 17 *de Agt'o, de* 1839.

Vista la peticion con que da principio este Espediente el informe del Alcalde del pueblo de San Jose y el de el S'or prefecto del primer distrito con todo lo demas qe se tuvo presente y ver convino de conconformidad con las leyes y reglamentos de la materia declaro a D. Tomas Boun dueno del parage nombrado Canada de San Felipe y Las Animas en estencion de dos sitios de ganado mayor colindante con el rancho de D'n Jose Bernal, con el de Don Jose Chavolla, con el de D'n Juan Alvarez y con la sierra de Sta Isabel sujitandose a pagar el canon correspondiente en caso que el dho terreno pertenesca a los ejidos del pueblo de San Jose Guadalupe y a las condiciones que se estiendan en el titulo El S'or D'n Manuel Jimeno
47 Casarin primer vocal propietario de la Exma Junta del departamento de las Californias en ejercicio del gobierno del mismo, lo mande decreto y firmo de que doy fee.

MAN'L. JIMENO.
FRANCISCO C. ARCE,
Oficial 1*o.*

5 S. D. K. MONTEREY, 19 *de Mayo, de* 1840.

Dada cuenta a la E. Junta Departamental acordo on secion ordinaria de este dia que pase a la comision de agricultura.

JOSE Z. FERNANDEZ,
S'rio.

En veinte y dos del mismo lo devolvio en comision con el dictamen que se acompana.

FERNANDEZ.

6 S. D. K. MONTEREY, 13 *de Junio, de* 1840.

En vista de la aprovacion otorgada en veinte y dos del mes p'o p'o por la E. junta departamental librese testimonio de ella a la parte de D. Tomas Boun en confirmacion del terreno S. Felipe y Las Animas que obtuvo en diez y siete de Agosto de mil ochocientos trienta y nueve El Sr. D. Juan B. Alvarado, gobernador constitucional del departamento de las Californias asi lo proveyo y firmo de que doy fee.

ALVARADO.

48 (Map.)

49 7 S. D. K.

Ex'mo. S'or: La comision de agricultura y comercio unidas encargada pr. V. E. de dictaminar los espedientes que en la sesion anterior acompano el Ex'mo S'or Gobernador y concedido por el mismo Gobernador y encontrandolos conformes segun lo actuado e informes y demas que ver se ha prodido propone a la deliberacion de V. E. los articulos siguientes.

Art'lo. 1o. Se aprueba la concesion hecha p'r el gob'no departamental fha 17 de Agosto, de 1839, en la persona de Tomas Boun del parage nombrado S'n Felipey Las Animas.

2o. Quese devuelva al Ex'mo S'or Gob'or el espediente p'a los fines convinientes.

Monterey, *Mayo* 21, *de* 1840.

JOSE RAFAEL GONZALEZ.
S. ARGUELLO.

8 S. D. K. Monterey, 22 *de Mayo, de* 1840.

En sesion de este dia se aprovo por la E. junta departamental los dos articulos con que concluye el dictamen anterior.

MANUEL JIMENO, *Presdt'e.*
JOSE Z. FERNANDEZ, *Srio.*

50 Office of the Surveyor General
Of the United States for California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the eight preceeding and hereunto annexed pages of tracing paper numbered from one to eight inclusive, and each of which is verified by my initials, S. D. K., exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., the 24th day of August, 1852.

[seal.] SAM'L. D. KING,
Surveyor Gen'l Cal.

Endorsed: Filed in office, Septb'r 11th, 1852. Geo. Fisher, Secr'y.

51 *Translation of espediente.*

Senor Prefect: We, Tomas Brown, married to a Mexican woman and Antonio Deli, residents in this county, before your honor with the greatest respect present ourselves, and say:

That we possess the number of two hundred head of neat cattle for the preservation and increase of which we are in want of a fit land,

and the place named San Felipe and Las Animas, situated to the east from this place, being vacant, we pray your honor to be pleased to grant it to us.

This land does not belong to any individual, corporation, or mission, wherefore we earnestly beseech your honor to have the goodness to provide as we have prayed, in which we will receive favor, &c.; this not going on stamped paper because there is none.

Pueblo of San Jose de Alvarado, May 14, 1839.

(Signed) ANTONIO DELI.
(Signed) TOMAS G. BROWN.

Senor Prefect.

52 It appears from the information which I have taken relative to the land petitioned for that it is vacant, and belongs to no individual or mission, it not being known whether it will correspond to the common or municipal lands of this town where they be marked out.

Hear it is distant four leagues to the south-east from it, with which I have complied with the following decree of your honor.

San Jose de Alvarado, May 23d, 1839.

(Signed) JOSE MINGUA.

The land which the persons interested solicit is absolutely vacant and may be granted to those without prejudice to any individual or pueblo, observing that the petitioners have no letter of naturalization, but they have resided eight years in the department, and the former is married to a Mexican, during which time he has honorably procured his subsistence, and the number of cattle which his representation shows.

San Juan de Castro, May 23d, 1839.

(Signed) JOSE CASTRO.

53 MONTEREY, *August* 17, 1839.

Having seen the petition with which this espediente begins the report of the alcalde of the pueblo of San Jose and that of his honorable prefect, 1st district, with all other things which were represented and deemed proper to be said in conformity with the laws and regulations on the matter. I declare Thomas Brown owner of the place named Canada, San Felipe y Las Animas.

In extent two square leagues bounded by the rancho of Don Jose Bernal, by that of Don Jose Chavalla, by that of Don Juan Alvizo and of the sierria of Santa Ysabel, remaining subject to pay the corresponding municipal tax in case the land should belong to the common lands of the pueblo of San Jose Guadalupe, and to the conditions which may be made out in the title.

Senor Don Manuel Jimeno Casarin, first regular vocal of the most excellent junta of the department of the Californias in exer-
54 cise of the government of the same, ordered, decreed, and signed it, of which I certify.

(Signed) MANUEL JIMENO.
(Signed FRANCISCO ARCE,
1st *Clerk.*

MONTEREY, *May* 19*th*, 1840.

Reported to the most excellent departmental junta, it was resolved in ordinary session of this day that it pass to the committee on agriculture.

(Signed) JOSE Z. FERNANDEZ.

On the 22nd of the same the committee entered it with the report which I transmit herewith.

(Signed) FERNANDEZ.

MOST EXCELLENT SIR: The united committee on agriculture and commerce charged by your excellency to report on the espedientes which in the previous session his excellency the governor transmitted and granted by the same government and finding them in con-
55 formity according to that professed the informations, and other things which they have been unable to see, proposes to the deliberations of your excellency the following articles:

Art. 1st. Approved the grant made by the departmental government, dated August 17, 1839, in the person of Thomas Brown to the place named San Felipe y Las Animas.

2nd. That the espediente be returned to his excellency for the convenient purposes.

Monterey, May 21st, 1840.

(Signed) JOSE RAFAEL GONZALES.
S. ARGUELLO.

MONTEREY, *May* 22, 1840.

In session of this day the most excellent departmental junta approved the two articles with which the foregoing report concludes.

(Signed) MANL. JIMENO.
(Signed) JOSE Z. FERNANDEZ.

MONTEREY, *June* 13, 1840.

In view of the approval granted on the 22nd day of last month by the most excellent departmental junta, let a testimony of it
56 be issued to the party of D. Tomas Brown in confirmation of the land San Felipe Las Animas which he obtained on the 17th of August, 1839.

Senor Don Juan B. Alvarado, constitutional governor of the department of the Californias.

(Signed) ALVARADO.

Filed in office, September 11, 1852.

GEORGE FISHER,
Secretary.

and the place named San Felipe and Las Animas, situated to the east from this place, being vacant, we pray your honor to be pleased to grant it to us.

This land does not belong to any individual, corporation, or mission, wherefore we earnestly beseech your honor to have the goodness to provide as we have prayed, in which we will receive favor, &c.; this not going on stamped paper because there is none.

Pueblo of San Jose de Alvarado, May 14, 1839.

(Signed) ANTONIO DELI.
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San Jose de Alvarado, May 23d, 1839.

(Signed) JOSE MINGUA.

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Senor Don Manuel Jimeno Casarin, first regular vocal of the most excellent junta of the department of the Californias in exer-
54 cise of the government of the same, ordered, decreed, and signed it, of which I certify.

(Signed) MANUEL JIMENO.
(Signed FRANCISCO ARCE,
1st Clerk.

MONTEREY, *May* 19*th*, 1840.

Reported to the most excellent departmental junta, it was resolved in ordinary session of this day that it pass to the committee on agriculture.

(Signed) JOSE Z. FERNANDEZ.

On the 22nd of the same the committee entered it with the report which I transmit herewith.

(Signed) FERNANDEZ.

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Monterey, May 21st, 1840.

(Signed) JOSE RAFAEL GONZALES.
S. ARGUELLO.

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Senor Don Juan B. Alvarado, constitutional governor of the department of the Californias.

(Signed) ALVARADO.

Filed in office, September 11, 1852.

GEORGE FISHER,
Secretary.

57 *Document No. 6, annexed to the depo. of Pablo de la Guerra, taken before Com'r Thornton.*

Sello 1° Seis pesos.

Habilitado provicionalmente por la aduana maritima de Monterey para los anos de 1839 y 1840.

[SELO.] ALVARADO.
ANTONIO MA. OSIO.

Manuel Jimeno Casarin primer vocal propietario dela ex'ma junta departamental de las Californias en ejercio del gobierno del mismo.

Per cuanto Tomas Boun naturalizado y casado en este departamento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Canada de San Felipe y Las Animas colindante con el rancho de Dn. Jose Bernal, Dn. Jose Chavolla, Dn. Juan Alvarez y la sierra de Santa Isabel; practicadas previamt'e las diligencias y averiguaciones concernientes segun lo dispuesto per leyes y reglamentos usando de las facultades que me son conferidas a nombre de la nacion Mejicana; he venido en conferirle el terreno mencionado, declarandole la propiedad de el por las presentes letras sugetandose a la aprovacion de la ex'ma junta departamental y a las condiciones siguientes.

58 1a. Pagara el canon que se le senalare si resultare el terreno pertenecer a los ejidos del pueblo de San Jose Guadalupe.

2a. Podra cercarlo sin perjudicar las travecias caminos y servidumbres; la disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le acomode pero dentro de un ano fabricara casa y estara habitada.

3a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limetes pondra a mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad.

4a. El terreno de que se hace mencion es de dos sitios de ganado mayor segun esplica el diseno que corre en el esped'te.

El juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convinientes.

5a. Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

59 En consecuencia mando que teniendose por fierme y valedero este titulo se tome razon de el en el libro a que corresponde y se entregue al interesado p'a su resguardo y demas fines. Dado en Monterey a diez y siete de Agt'o de mil ochocientos treinto y nueve.

MAN'L JIMENO.
FRAN'CO ARCE, *Oficial* 1°.

Queda tomada razon de este despacho en el libro de asientos sobre adjudicacion de terrenos val dios.

ARCE.

Sello Cuarto Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias para los anos de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHEL TORRENA.

Pablo de la Guerra, por Ans'a del Administrador.

[SELLO.] GUILL'O ED'O HARTWELL,

Ex'mo S'or Gobernador.

60 MONTEREY, *Agt'o* 1° *de* 1844.

Inf'l el S'or Scrio del despacho toman do otros si los necesitare.

MICHETT'A.

Francisco Garcia, natural de este departam'to, y vecino de la jurisdiccion del pueblo de San Jose ante V. E. en la forma q'e mas haya lugar en justicia dijo: que 1842 teniendo necesidad de un terreno para progreso de los bienes de Campo que poseo celebe el trato que expresa el documento que a V. E. devidamente acompano, por el que le compre a Tomas Boun el parage nombrado Canada de San Felipe y Las Animas en el concepto de que cree que habia adquirido en el un derecho legal y que estaba facultado para venderlo mas sabiendo hoy per personas instruidas que Boun cuando enageno el terreno a que me refiero no era dueno de el por que en tres anos que pasaban no lo fabrico ni cultivo y que de ninguna manera podia venderlo he venido a suplicar a V. E. me exima de la obligacion en que todavia me hallo por razon del ya ci-
61 tado contrato por que no he acabado de pagar lo que ofrece a Bone por el dro con que equivocadamente lo considere en el terreno repetido. Igualmente denunciando este en toda forma por valdio por parte de Bone y en atencion a que yo he establecido en el algunos trabajos y al desembolso que injustamente he hecho en favor de Bone, he de merecer de la sabia justificacion de V. E. me conceda en propiedad el terreno y a repetido en la misma estencion que senala el titulo respectivo que tengo en mi poder y tambien respetuosamt'e acompano. P. S. A. V. E. imploro se digne tomar en consideracion ambos pedidos de cuya gracia vivire reconocido jurando lo necesario, &c.

Monterey, Agosto 1°, de 1844.

FRAN'CO GARCIA +.

EX'MO S'OR GOBERNADOR: No encuentra inconviniente alguno p'r que el interesado ocupe como propio el terreno que nombran San Felipe, por derecho que le sedio D. Tomas Boun, pero en cuanto al eximirse del pago en que compro el vecino Fran'co Garcia
62 creo que corresponde resolver el superior tribunal p'r haberse estendido una escritura sobre venta del terreno a que me refiero. La sup'or disposicion de V. E. sera lo que mejor convenga.

Fha la misma.

MAN'L JIMENO.

MONTEREY, *Agt'o* 1°, *de* 1844.

Conf'l con un todo con el antecedente inf'l declaro p'r propiedad el sitio al q'l representa y en cuanto a los segunda parte sobre el pago de lo antecedente ante el juez no teniendo el titulo los condicionales de no poder vender ni enagenar &'a dirijase al supremo tribunal p'a su resolucion.

MICHETT'A.

Superior Tribunal de Justicia.

Informe el S'or Juez del pueblo de S. Jose si desde el 7 de Agosto de 1837 en q'l por superior titulo le fue concedido el terreno conocido con el nombre de Canada de Animas y S. Felipe a D. Tomas Bon este lo tuvo sin cerco, casa, plantios, ni cultivo hta el 7 de Octubre de 1842 en que lo enageno por venta a D'n Franc'o Garcia.

63 MONTEREY, *Agosto* 2 *de* 1844.

Por enfermedad del S. Presd'te Jose Maria Castanarez:

Habilitado provicionalm'te por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los anos de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

[SELLO.] MICHELTORENA,
Pablo de la Guerra.

Por Aus'a del Adm'or—

GUILLER'O ED'O HARTWELL.

(Sello quinto un real.)

Cumplim'to del superior decreto que antecede devo decir que el terreno consedido a Don Tomas Boun, nunca a tenido finca de casa corral, serco ni siembra pero en el mes de D'bre del ano pasado D. Francisco Garcia hizo un corral el que hasta la presente existe con lo que creo dar el debido complim'to pueblo de S. Jose.

Agosto 8 de 1844.

ANTONIO MA. PICO.

MONTEREY, *Setiembre* 12 *de* 1844.

64 Como aparesca perfeccionado el contrato hecho entre Fran'co Garcia y Tomas Bon por la entrega q'l el primero hizo el segundo, de una parte, del valor en que compro y la ocupacion del terreno por el, no habiendo sido reconvenido Bon por la venta q'l hacian no puede quedar el representante exsimida del pago y de lo que deve a Bon pues si bien es verdad q'l este entres anos no ocupo el terreno y por tal segun el titulo tenia perdido su derecho tambien los que habindo consentido ambos contrayentes en la entrega y recibo sin q'l hta efectuarse se hubiese enterpuesta ningun denunciante del terreno, el vendedor hacia uso de la que con justo titulo habra adquirido y en tal concepto esto Garcia obligado a pagar a Bon, pase esta al juez de San Jose para que lo notifique a ambas partes devolo iendo todo a lo que representa.

MALARIN.

Endorsed: Filed in office Sep'r 11, 1852. Geo. Fisher, secr'y.

[Stamp first, six dollars.]

65 *Translation of title.*

Provisionally authorized by the maritime custom-house of Monterey for the years 1839 and 1840.

(Signed) ALVARADO.

(Signed) ANTO. MA. OSIO,
Monterey Custom-house.

Manuel Jimeno Casarin, first regular vocal of the most excellent
67 junta of the department of the Californias, in exercise of the government of the same.

Whereas Tomas Brown, naturalized and married in this department, has, for his own personal benefit and that of his family, petitioned for the land known by the name of San Felipe y Las Animas, bounded by the ranchos of Don Jose Bernal, Don Jose Chavilla, Don Juan Alviso, and the Sierra of Santa Isabel, the proper measures and examinations being previously made as required by laws and regulations:

Using the powers which are conferred upon me in the name of the Mexican nation, I have conferred on him the aforesaid land accruing to him the ownership of it by these presents, subject to the approval of the most excellent departmental junta, and to the following conditions:

1st. He will pay the municipal tax which may be designated if the land shall prove to belong to the common lands of the pueblo of San Jose Guadalupe.

2nd. He may enclose it without prejudice to the crossings, roads and servitudes; he may enjoy it fully and exclusively, making
68 such use or cultivation of it as may best suit him; but within one year he shall build a house and it shall be inhabited.

3d. He will request the proper magistrate to give him judicial possession in virtue of this title, by whom the boundaries will be marked out, in the limits of which he shall place, besides the boundary, some fruit or fruit trees of an useful character.

4. The land of which mention is made is two square leagues, according to the maps which goes in the espediente. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the nature of its convenient uses.

5th. If he contravene these conditions he will lose his right to the land, and it may be demanded by another.

In consequence, I order that this title, being held as firm
69 and valid, note be made of it in the corresponding book, and it be delivered to the party interested for his security and other purposes.

Given in writing on the seventeenth of August, eighteen hundred and thirty-nine.

(Signed) MAN'L JIMENO.

(Signed) FRANCISCO ARCE,
1st Clerk.

Note has been made of this title in the book of entries of grants of vacant lands on file.

(Signed) ARCE.

Filed in office September 11th, 1852.

GEORGE FISHER, *Secretary.*

[Stamp fourth, two reals.]

Translation of proceedings in Supreme Tribunal.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

(Signed) MICHELLIENA,
PABLO DE LA GUERRA,

In the absence of the adm's'tr.

(Signed) GUILLIMEO E. HARTNELL.

(Seal of custom-house, Monterey.)

70 MONTEREY, *August 1st*, 1844.

Let the secretary of state report calling for information if he needs it.

(Signed) MICHELTERRA.

To His Excellency the Governor:

I, Francisco Garcia, a native of this department and resident of the jurisdiction of the pueblo of San Jose, before your excellency in the most proper form in justice say, that in 1842 having need of a land for the improvement of the stock which I possess, I executed the contract shown by the document which I duly transmit herewith to your excellency, by which I purchased of Tomas Brown the place named Canada de San Felipe y Las Animas, in the impression that I believed that he had acquired in it a legal right, and had power to sell it.

But, however, now from well-informed persons, that when Bone alienated the land to which I refer, he was not the owner of it, because in the three years which passed he neither built on nor cultivated it, and that he would not sell it in any manner, I have come to ask your excellency to relieve me from the obligation from which
71 I still am by reason of the aforesaid contract, for I have not yet finished paying that which I promised to Bone for the right which I erroneously considered him to have in said land. Moreover, denouncing this land in all form as vacant on the part of Bone, and in view of the fact that I have established in it some labor, and of the disbursement which I have unjustly made in favor of Bone, I will assume of your excellency's wise justification that you grant me in fee the land here referred to in the same extent as designated in the respective title which I have in my power, and also respectfully transmit.

Wherefore I implore your excellency to take into consideration both

petitions, for which favor I will live greatful, swearing what may be necessary, &c.

Monterey, August 1st, 1844.

(Signed) FRANCISCO GARCIA +.

To his Excellency the Governor:

I find no objection to allowing the person interested to occupy as his own the land named San Felipe, by the right which Don Tomas Brown conveyed to him, not with respect to the release from the payment of the amount in which the resident Francisco Garcia purchased. I think that it belongs to the Supreme Tribunal to decide, as a writing was executed to which I refer your excellency, and supreme disposition will be the most proper.

72

Date the same.

(Signed) MANUEL JIMENO.

MONTEREY, *August 1st*, 1844.

In conformity with the foregoing report I declare the place to the property of him who represents, and with respect to the second part upon the payment of that contracted for before the magistrate, the title not having the conditions of not being able to sell or alienate, &c., let it be sent to the Supreme Tribunal for its decision.

(Signed) MICHELTERRENO.

73 SUPREME TRIBUNAL OF JUSTICE.

Let the magistrate of the pueblo of San Jose report whether from the 7th of August, 1839, in which the land known by the name of Canada de Las Animas y San Felipe was granted to Don Tomas Brown, he had it without fence, house, plantings or cultivation until the 7th of October, 1848, on which day he alienated it by sale to Don Francisco Garcia.

Monterey, August 2nd, 1844.

On account of the sickness of his honor the President.

(Signed) JOSE MARIA CASTAEMOS.

[Stamp fifth, one real.]

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias for the years 1844 and 1845.

(Signed) MICHELTANIA,
For Pablo de la Guerra.

(Sig.) GULLED E. HARTNELL.

[Seal of the custom house.]

In compliance with the superior decree which preceeds, I have to say that the land granted by Don Tomas Brown has never had any improvement wether house, corral or planting, but in the month of December, of last year, Don Francisco Garcia made a corral which still exists, with which I think it gave the due compliance.

74

Pueblo de San Jose, August 8th, 1844.

(Signed) ANTO. MA. PICO.

MONTEREY, *September 12th*, 1844.

As the contract which was made between Francisco Garcia and Tomas Brown appears to have been perfected by the delivery which the former made to the latter of a part of the amount for which he purchased, and by the occupation of the land by him and Brown not having been served on this all which he made, the person representing cannot be relieved from the payment of that which he owes to Brown, for although it may be true that he did not occupy the land in three years, and by that according to the title, had lost his right,
it is also true that both the contracting parties having consented
75 to the delivery and receipt without any owners of the land
intervening until it was made, the vendor made use of that which he had acquired with just title, and in this view Garcia is bound to pay Brown.

Pass this to the magistrate of San Jose that he may notify both parties, returning all the papers to him who represent.

(Signed) MALAREM.

Filed in office September 11, 1852.

GEORGE FISHER, *Secretary*.

76 *Petition.*

To the honorable board of United States land commissioners to settle private land claims in California:

The petition of Jordan de Jesus Bernal, Jose Antonio Bernal, and Juan Bernal of Castro respectfully showeth:

That about the 9th day of August, A. D. 1839, Jose Castro, prefect of the district of San Jose, by virtue of the authority in him vested the various laws of Mexico, then in force, the law, usages, and customs of the country affecting grants of land of California, granted unto your petitioners the piece of land.

And rancho situated east of the pueblo of San Jose Gaudalupe, and known by the name of Canada de Palo, containing about two leagues, as described in the papers and maps relating to the same, the originals being in the possession of your petitioner ready to be produced and proved before your honorable court board, and your petitioners further show that they have been in the peaceable and
quiet enjoyment of said premises, since the date of said grant
77 up to the present time.

Either by your petitioners occupying the said land and premises in person, or by other persons claiming under your petitioners, cultivating the said lands to some extent, and stocking the same with horses, cattle, and hogs, all of which is respectfully submitted for such action as the nature and justice of the claim may require.

E. O. CROSBY, *Claimant's Counsel*.

Filed in office, February 24th, 1853.

GEORGE FISHER, *Secretary*.

Endorsed: Recorded in volume 1 of Petitions, pages 614, 615. George Fisher, secretary.

Deposition of A. M. Pico.

OFFICE OF THE BOARD OF COMMISSIONERS
OF CALIFORNIA LAND CLAIMS,
San Francisco, August 13th, 1853.

78 This day before Commissioner Alpheus Felch, one of the United States commissioners to ascertain and settle private land claims in California, came Antonio Maria Pico, a witness in behalf of claimants, Jose de Jesus Bernal *et al.*, number 617 in the docket of said commissioners, and being duly sworn, deposed as follows:

Questions by Mr. Crosby, attorney for claimants:

1 question. What is your name, age, and place of residence :

My name is Antonio Maria Pico. My age forty-three years, and I reside at San Jose, in the county of Santa Clara, in the State of California.

2 question. Look in the paper now shown to you, marked Exhibit number 1, with the initials A. F., purporting from the persons named [named] Bernal, and a decree of Jose Castro, prefect of the first district therein, and dated in the year 1839, which documents are annexed to this deposition, and say whether you recognize as genuine all or any of the signatures, appearing therein, and
79 dated in the year 1839, which documents are annexed to this deposition, and say whether you recognize, as genuine, all or any of the signatures appearing therein.

Answer. I recognize, as genuine, the signatures of Jose Dolores Pacheco and Jose Maria Cuamelios appearing therein. I have seen them all write, and know their signatures well.

3d question. Did these individuals exercise any official functions in the year 1839, and if so, what?

Answer. Jose Castro was acting as prefect, and said Covarrubus was his secretary; Dolios Pacheo was justice of the peace.

4 question. Do you know the land described in the documents above mentioned; if yea, when and how was it first occupied, and by whom improved?

Answer. I know the place; it is situated rather more than a league and a half eastward from San Jose; it is a small tract.

The Bernals have always occupied the land, ever since it was granted to them to the present time; they have large houses
80 of adobes, upon it which are occupied with their families.

I saw houses there five or six years ago; they had corrals on the [the] land with cattle, and they cultivated the premises.

ANTONIO MARIA PICO.

Mr. Grunhar, associate law agent, was present at the taking of this deposition, but declined to propound any questions to the witness.

The testimony was given in the Spanish language, Mr. Grenhun,

by consent of parties acting as interpreter, summoned. Subscribed before me at San Francisco this 13th day of August, A. D. 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office, August 13th, 1853.

GEO. FISHER, *Secretary.*

Endorsed: Recorded in evidence b, volume 3, page 47. George Fisher, secretary.

81 *Depo. of Jose Castro.*

UNITED STATES LAND COMMISSION,
San Francisco, November 8, 1854.

On this day before Commissioner Alpheus Felch came Jose Castro, a witness on behalf of the claimants, Jose de Jesus Bernal et al., case number 7, who, after being duly sworn, deposed as follows: his evidence being interpreted by the interpreter of the board.

Questions by Mr. Crosby, attorney for claimants:

1 question. Please state your name, age, and place of residence.

Answer. My name is Jose Castro; my age forty-six years, and I reside at Monterey, California.

2d question. Please look in the document now here presented to you, and marked exhibit, number, with the initials A. F., heretofore filed in this case, and state whether you are acquainted with the handwriting of Jose Castro, Jose Maria Covarrubus and Dolores Pacheco, and if yea, whether the signatures, appearing as
82 thus in said document, are their true and genuine signatures.

Answer. I have examined said document, and I am acquainted with the handwriting of the persons named; the signatures on said document are their true and genuine signatures; that of Jose Castro is my own.

3d question. What offices, if any, did said persons hold at the date of the instrument signed by them?

Answer. I was prefect of the first district when I signed the same, which was at the time the instrument bears date; Covarrabuas was secretary of said prefecture, and Pacheco was alcalde at that time. The land described in said document is situated within what was then the jurisdiction of said prefecture and said alcalde.

Questions by Mr. Blanding, associate law agent:

1st question. What knowledge have you of the handwriting of Jose Maria Covarrabuas' and Dolares Pacheco?

Answer. They were subaltern officers in my prefecture, and I often received official communications from them. I have seen both
83 of them write often, and have received private letters from them.

JOSE CASTRO.

Subscribed and sworn to before me this 8 day of November, 1854.
ALPHEUS FELCH, *Commissioner*.

Filed in office November 8th, 1854.
GEORGE FISHER, *Secretary*.

Recorded in evidence B, volume 5, p. 625.
GEORGE FISHER, *Secretary*.

Depo. of A. M. Pico.

SAN FRANCISCO, *March 26th*, 1853.

On this day, before Commissioner Hiland Hall, came Antonio Maria Pico, a witness in behalf of the claimants, Jose de Jesus Bernal et al., and was duly sworn, his evidence being interpreted by the secretary.

The United States associate law agent was present.

In answer to inquiries by the counsel for the claimants, the witness testified as follows:

My name is Antonio Maria Lico; my age is forty-four years;
84 and I reside in San Jose. I know the rancho called Canada de Pala; it is situated in the county of Santa Maria, about three leagues to the east of San Jose. I have known it ever since the year 1835, during all which time it has been in the occupation of the Bernal family; Jose de Jesus Bernal, and Juan Bernal first occupied it; Jose Antonio Bernal is a brother of the two former, and he was occupied with them. They have occupied from that time to the present; they had at first a small house in which they lived, and afterwards built a larger and better one; have raised cattle, sheep and horses, and have cultivated portions the land.

Question by the associate law agent: Do you know that the prefect possessed any power by the laws of Mexico to grant lands in California?

Answer. By the law of 1837 the prefect had authority to grant lands within the common lands of towns.

Question by counsel for the claimants. Was it customary for prefects to make such grants?

Answer. It was customary for them to grant lands within
85 the Ejidos common lands of the town governor. Alvarado authorized Jose Castro, the prefect, to make grants, as I was told, beyond the limits of the town; Manuel Castro was afterwards prefect.
ANTONIO MARIA PICO.

Sworn and subscribed before me.
HILAND HALL, *Commissioner*.

Filed in office March 26, 1853.
GEORGE FISHER, *Secretary*.

Recorded in evidence B, vol. 2, page 662.
GEORGE FISHER, *Secretary*.

Deposition of A. Chaboya.

UNITED STATES LAND COMMISSION,
San Francisco, November 8, 1854.

On this day, before Commissioner Alpheus Felch, came Antonio Chaboga, a witness in behalf of the claimants, Jose de Jesus Bernal et al., case number 617, who after being duly sworn deposed as follows, his evidence being interpreted by the interpreter of said board.

Questions by Mr. Crosby, attorney for claimants:

86 1st question. Please state your name, age, and place of residence.

Answer. My name is Antonio Chaboya; my age is fifty-one years; and I reside near the pueblo of San Jose in Cal.

2d question. Do you know the rancho called Canada de la Pela, claimed in this case; if yea, how is it situated, what do you know of its occupation, and by whom?

Answer. I have; said rancho is situated in Santa Clara county, adjoins my own rancho, which is named Yerba Buena; it is sure 16 years since I first knew the rancho Canada de Pala to be occupied. It was then occupied by Jose de Jesus Bernal, Jose Mintun Bernal and Juan Bernal Y. Castro; they had at that time two hun-

87 dred head of cattle on the place; a band of mares, one corral and a house, which was built of stones and mortar; they lived in the house and had a small piece of land enclosed and cultivated. They have continued to live there and occupy the place unto the present time, and have planted and cultivated every year.

3d question. What are the boundaries of said rancho?

Answer. It adjoins my rancho on one side which makes the western boundary of said Canada de Pala on the south; it is bounded by the rancho of Charles Weber on the east, the Lana de Pala Sece is the boundary, and on the north the arroyo de Lamee del Palo Seco, which runs into the arroyo del Aquage. This arrayo commences about the center of the Loma del Palo Seco and runs west, emptying into the arroyo del Aquage near the northwestern corner of the rancho.

Questions by Mr. Blanding, associate law agent:

1 question. How was the boundary between the rancho in

88 question and that of Weber marked?

Answer. There is a thicket in the chamisal partly embraced in the rancho under the line, at or near the southeastern corner of the rancho. There is also an oak tree on this line, marked with a Cross, which is at the southwestern corner of the rancho.

There is also an oak tree on this line, marked with a Cross, which is at the southwestern corner of the rancho, and also stands in the line of my rancho.

2nd question. State the general form of the rancho and the dimensions.

Answer. It is a Canada, and is longer than it is wide from east

to west, which [which] is from my rancho to the Lama del Palo Seco, it is about a league and three grantees; and from north to south it is about two leagues and a half.

his
ANTONIO + CHABAYO.
mark.

Subscribed and sworn to before me on this eighth day of November, 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office, November 8th, 1854.

GEORGE FISHER, *Secretary.*

89 Recorded in evidence b, vol. 5, page 601.

GEORGE FISHER, *Secretary.*

UNITED STATES OF AMERICA, *State of California, ss:*

SAN FRANCISCO, *November* 9, 1854.

This day came before Peter Lott, and a commissioner for taking testimony to be used before the board of United States land commissioners in said State, Jose Noriega, witness on behalf of the claimant, Jose Jesus Bernal, et al, in case number 7 in docket of said board, and said witness being duly sworn, deposed in Spanish, which was interpreted by the interpreter to said board, as follows:

The United States law agent is present.

Questions.

By E. O. Crosby, esq., attorney for claimant:

1st question. What is your name, age, and residence?

Ans. My name is Jose Noriega; my age fifty-four years; my residence in Santa Clara county, California.

90 2d quest. Do you know the rancho of Canada de Pala, claimed in this case? If yea, state where it is situated, and what you know of its occupation.

Ans. I know said rancho. It is situated in Santa Clara county, about four leagues east of the pueblo of San Jose. It is adjoining the ranchos of Antonio Chaboya and J. Higima. The rancho of Canada de Pala, in 1839, was occupied by Juan Bernal de Castro, Jose Bernal de Castro and Antonio Bernal de Castro. I saw them on said rancho, then building an adobe house and a corral. I saw them put in the place two hundred head of cattle or thereabouts, a band of mares and some other houses; besides they had a field enclosed and were cultivating it. It was then planted in corn, beans, wheat and barley. The said Beernl de Castro was living there at the time with large families; these families have continued from that time to the present to reside on, occupy, and cultivate said rancho.

Cross-examined.

By the associate law agent:

91 1 question. How far have you resided from said rancho, and when and how often have you visited it?

Answer. I have lived at San Jose, and have been in the habit of visiting said rancho as aforesaid. I have seen it in the period spoken of a hundred times, I may say with safety.

2 question. What marks the boundaries between the rancho and that of Higuira, and that of Chabayo?

Answer. It is divided from both of these ranchos by a mountain, the top of which is the boundary; it is called Sierra Nevada.

JOSE NORIEGA.

Subscribed and sworn to before me on this 9 day of November, A. D. 1854.

PETER LOTT, *Commissioner.*

Filed in office, November 10, 1854.

GEORGE FISHER, *Secretary.*

Recorded in evidence b, vol. 5, page 630.

GEORGE FISHER, *Secretary.*

92 *Deposition of J. A. Forbes, United States land commissioner.*

SAN FRANCISCO, *Dec. 28th*, 1854.

On this day, before commissioner Alpheus Felch, comes James Alexander Forbes, a witness on behalf of the claimants, Jose de Jesus Bernal, in case No. 617, who, after being duly sworn, deposed as follows:

Questions.

By Mr. Crosby, attorney for claimants;

1 question. Please state your name, age, and place of residence.

Answer. My name is James Alexander Forbes; my age is forty-nine years, and I reside at Santa Clara, in California.

2d question. Look on the map now here shown to you, marked exhibit No. 1, with the initials A. F., and attached to the deposition, and state if you know who made said map; at what time it was made; for whom, and what lands it represents.

Answer. This is a sketch or representation of the lands called Canada delsaler, situated in the county of Santa Clara, and in the northern district of California; it was made by me in the summer of

93 1839, at the request of the three brothers, Jose, Antonio and Juan Bernal. I was on the ground, and went on it, and made a rough examination and measurement of it. I had also been intimately acquainted with the place for many years before. The delineation of that tract of land is sufficiently correct to render its

indentification easy. It contains just about the quantity asked for in the petition to the governor, in which the grant was made. I believe that I wrote the petition myself. The brothers above named were in possession of said land when I made the measurement and map, and have been in possession ever since; they had there a carrol and cattle on the land, and one of them lives there at the present time. This map was made for the purpose of being presented to the governor with the petition for the grant.

Questions.

By Mr. Blunding, associate law agent:

1 question. What is the farm, and about the dimensions of
94 the rancho ?

Answer. It is along Warren Valley, bounded on the east by a high ridge of mountains, which is the commencement of the main range of mountains, dividing the San Joaquin valley from that of Santa Clara; and on the west by a ridge of high hills which divide it from the rancho called Pala; on the north it is also divided by a range of high hills, one of which is a remarkable arch called the Penasco; on the south, its narrowest point is a gorge between the mountains, entering into the valley of San Felipe at the south.

The rancho is about two leagues or two and a half long, and about one league wide—the valley itself is level land, small, being very narrow and not more than four to six hundred yards wide.

And its utmost length about one league—this stretch includes also the side hills as well as the valley.

JAS. ALEX. FORBES.

Subscribed and sworn to before me this 28 day of December, 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office December 28, 1854.

GEO. FISHER,
Secretary.

95 *Depo. of J. B. Alvarado.*

UNITED STATES OF AMERICA,
State of California, ss :

SAN FRANCISCO, *January* 19, 1855.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of United States land commissioners in said State, Juan B. Alvarado, a witness on behalf of the claimants Jose de Jesus Bernal et al., in case number 617 on the docket of said board.

And said witness being duly sworn, in Spanish, deposed, which was interpreted by the interpreter to said board as follows:

Cross-examined by the United States law agent, who was present.

Questions by Mr. Crosby for claimants:

1st question. What is your name, age, and residence?

Ans. My name is Juan B. Alvarado, my age forty-five years, my residence Contra Costa county in California.

2d question. What offices have you held in California under the Mexican government?

Ans. I was secretary of the territorial junta about 1827;
96 I was a member of the said junta in 1834. I was an officer in the custom-house in 1835; I was political chief of California in 1837 and 1838, and in 1839 and from that time till 1842, inclusive, I was governor of the department. In 1843 I was colonel of militia; in 1845 I was deputy to the Mexican congress and I have had minor public employments which I do not now remember.

3d question. Look at the document now shown to you marked A. P. L. as an exhibit to this deposition, and state whether you are acquainted with the handwriting of Jose Castro, Dolores Pacheco, and Jose Maria Coravulias; if yea, state your means of knowledge, and also whether their signatures respectively, when they occur on said document, are original.

Ans. I am acquainted with the handwriting of these persons, and I have seen them all write and sign their names, and I believe their respective signatures on the several places where they occur in this document to be genuine.

4th question. State what right or title, if any, did the
97 grantees named in said document derive, under and by virtue of said document, by the laws and usages of the Mexican government?

Ans. The prefectures were established during my administration. As governor I issued an order conferring authority upon the prefect of the first district to grant lands in the neighborhood of settlements or pueblos. Jose Castro was prefect of the first district at the time this document bears date, and was clothed with the authority; and the rights acquired by the grantees (Bernals) are [are] the same under this document as they would be had the governor of the department made the grant.

Cross-examined by the United States associate law agent:

1st question. Under what law were the prefects authorized to grant lands?

Answer. The law of regulations. (Ley Rey lam cut aria) of 1837 I understand as authorizing prefects to grant common lands of the pueblos.

2 question. Was this power of the prefect dependent upon
98 the consent or delegation of the governor?

Answer. That law of 1837 conferred the power upon the prefect independent of the governor, so far as related to the common lands of pueblos, but beyond that the prefect could only grant with the consent and approval of the governor.

3d question. Was the order you made as governor, authorizing the prefect of the first district to make grants, a written or verbal order?

Answer. I remember to have ordered the secretary to despatch such an order in writing to said prefect. I take for granted my order to the secretary was obeyed though he never showed me the man. It was not customary for the governor to sign such communications—they were signed by the secretary.

JUAN B. ALVARADO.

Subscribed and sworn to before me on this 19 day of January, A. D. 1855.

PELER LOTT,
Commissioner.

Filed in office January 23d, 1855.

GEO. FISHER,
Secretary.

99 *Translation espediente.—Exhibit B.*

There is no stamped paper.

Senor Prefect Jose de Jesus Bernal, Jose Antonio Bernal, and Juan Bernal and Castro, natives of this country.

We present ourselves before your excellency with due respect and say that we are owners of two hundred head of large cattle and a band of mares, and desirous to procure the preservation and increase of these goods.

We beg your excellency may be pleased to grant us a small piece of land situated east of the pueblo of San Jose de Guadalupe, and now known by the name of Canada de Pala, and as appears by the annexed plan is only 8,000 varas in breadth, and scarcely 12,000 in its greatest length.

This land belongs to no particular corporation or mission, wherefore we respectfully pray that you may deign to grant us our petition by which we shall receive favor, &c.

Pueblo of San Jose of Guadalupe, April 25, 1839.

JOSE DE JESUS BERNAL. +
JOSE ANTONIO BERNAL. +
JUAN BERNAL Y CASTRO. +

Marginal decree.—Pueblo of San Juan de Castro, August 8, 1839.

100 Let the justice of the peace of the pueblo of San Jose of Alvarado give information of the petitioners in this instance. Here observed the legal requisites to be attended to if the land petitioned for belongs to the property of any corporation, pueblo, or person, and if it can be granted to them in property.

CASTRO.

SENOR PREFECT: In fulfilment of the preceeding decree of your excellency, I have the honor to inform that the petitioners in this instance have observed that the legal requisites to be attended to.

That the land they petition for is found to be vacant.

That it is the property of no one in particular, and can be granted in fee.

Pueblo of San Jose of Alvarado, August 9, 1839.

DALUIS PACHECO.

PUEBLO OF SAN JUAN DE CASTRO, *August 10th*, 1839.

In view of the representation heading this espediente, the information of the justice of the peace of the pueblo of San Jose of Alvarado, and of the other matters which seem meet, and there ap-
101 pearing to be no one opposing the possession and property of the land prayed for, the interested parties may go before the respective judge, that he may give them juridical possession in virtue of this decree.

By whom the boundaries may be marked out. Let record be made of this order in the respective book, and, presenting the title to the petitioners, let it be delivered to them for their protection and other ends.

The Senor Don Jose Castro, prefect of the first district thus it ant demescem signs, which I attest.

JOSE CASTRO.
JOSE MARIA COVARRUBIAS,
Secretary.

Let record be taken in the respective book.

COVARRUBIAS.

Filed in office Feb. 24, 1853.

GEORGE FISHER,
Secretary.

102 *Opinion of the board.*

JOHN ROLAND AND J. L. HORNSBY
vs.
THE UNITED STATES. } No. 282.

This is a claim for nine square leagues of land purporting to be the vacant or surplus lands of the plains called Las Animas, and

the rancho de Pala, and embracing the lands of the cerro Colorado (Red mountain.)

The petitioners claim to derive their titte from a grant made by Governor Pio Pico to Don Louis Arenas and Don Juan Roland, on the 6th day of May, 1846, a traced copy of an espediente from the archives of the Mexican government in California, now in the custody of the United States surveyor general, duly certified, is filed in the case.

It appears from this document that the grantees presented their petition to the governor for the grant, on the 5th day of May, 1846. On the next day, that officer, without, so far as appears from the record, making any inquiries or investigations in relation to the matter, entered a decree of concession, and directed the title to be issued and delivered to the interested parties.

103 There is no evidence that the grant was ever approved by the departmental assembly, or that judicial possession was ever given, nor is it shown that the grantees were ever in possession of the land, or occupied it in any manner. The lands all described in the grant as situated in the vacant or surplus lands of the place called Las Animas, and of the rancho de Pala, in the jurisdiction of the pueblo of San Jose Guadalupe, belonging to Don Carlos Weber and Jose de Jesus Bernal, embracing the lands of the cerro Colorado (Red mountain) towards the slope of the valley, until the full number of nine leagues is made up.

A stipulation is filed in the case, by which it is agreed between the counsel of the claimants and the United States law agent, that the evidence taken and the papers filed in cases number 333, Chas. M. Weber, claimant, and number 617, Jose de Jesus Bernal et al., claimants, except mesne conveyances and testimony taken to prove such conveyances, shall be considered as taken and filed in this case, and form part of the record therein.

A careful examination of these files affords no aid to the
104 description contained in the grant. There is nothing in them to show that there is any sobrante or surplus contained within the limits of their claims, or if there was, in what part of them it is situated.

Nor is there any proof of the existence of the position of the mountain called cerro Colorado. We are therefore left to the description in the grant above for the true location and position of the land, and it is too vague and indefinite to enable us to describe them with any degree of certainty.

But even if this difficulty was obviated, the absence of any evidence of the performance of the conditions which, according to the rules laid down by the board is required in all cases of inchoate grants in donation made under the authority of the colonization laws of Mexico would be fatal to a confirmation of the claim.

The application of the petitioners for a confirmation must therefore be denied.

Filed in office Nov. 21, 1854.

GEO. FISHER, *Sec'y.*

105 *Decree.*

JOHN ROLAND AND J. L. HORNSBY
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is not valid, and it is therefore decreed that his application for confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office November 21st 1854.

GEORGE FISHER,
Secretary.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings of the answer in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary,
106 one of which transcripts shall be filed with the clerk of the United States District Court for the northern district of California, and the other to be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To Ascertain and Settle the Private Land Claims
In the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing sixty-nine pages, numbered from 1 to 69, both inclusive, to contain a true, correct and full transcript of the record of proceedings and of the decision of the said board of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded on file in this office, in case number 282 on the docket of said board, wherein John Roland and others are claimants against the United States, for the place known by the name of "Los Huecos."

107 In testimony whereof I have hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this 20th day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.] GEORGE FISHER,
Secretary.

108 In the District Court of the United States for the northern district of California.

Admission of appellants.

JOHN ROLAND AND J. L. HORNSBY, appellants,
vs.
THE UNITED STATES, appellees.

It is admitted that on the 22d day of July, 1845, a grant was made by Gov'r Pio Pico to John Roland and Julian Workman, of four leagues of land in the southern part of California, and that on the 2d day of May, 1846, a grant was made by Pio Pico, then gov'r of California, to John Roland of eleven leagues of land in the Stanislaus river, and that the said John Roland is the same person who is one of the claimants in this case.

San Francisco, November 2d, 1857.

A. P. CRITTENDEN,
Att'y for Claimants.

109 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The Honorable Ogden Hoffman, district judge.

Order vacating submission, &c.

THE UNITED STATES
vs.
JOHN ROLAND *et al.* } No. 221.

On motion of A. P. Crittenden, esq'r, counsel for the claimants, the U. S. district attorney being present and not objecting thereto, it is ordered by the court that the submission herein be vacated, and that the said cause be placed on the trial docket for the purpose of allowing further evidence to be taken.

Filed April 5th, 1858.

W. H. CHEVERS,
Clerk.

110 In the District Court of the United States for the northern district of California.

Stipulations admitting certain depositions taken in case No. 103.

JOHN ROLAND AND J. L. HORNSBY
vs.
THE UNITED STATES. } No. 221 Dist. Court. No. 282 Land Comm'r.

It is stipulated and agreed that a copy of the deposition of Pio Pico, taken in the case of John Roland vs. The United States, (No.

103 Dist. Ct; No. 232 land comm'r,) may be filed in this case, and shall be considered as taken herein, omitting therefrom, however, questions and answers Nos. 8, 9, 10, 11, 14 and 15, and the documents therein referred to, the same having no connection with this case; and it is admitted that the paper referred to in question and answer 33 of the deposition of Pio Pico in the original of the espediente of the grant to John Roland and Luis Arenas, a copy of which appears in the transcript in this case.

And it is further stipulated and agreed, that a copy of the deposition of Jose Mattias Moreno, taken in said case of John Roland vs. The United States, (No. 103, Dist. Ct. and No. 232, L. C.,)
111 may be filed in this case and considered as taken herein; and it is admitted that the papers referred to in the said deposition in question and answers 29 and 30 are the original decree of concession and grant or titulo, of which copies appear in the transcript in this case.

And it is further stipulated and agreed, that a copy of the deposition of Rufus C. Hopkins, taken in said case of John Roland vs. The United States, (No. 103 Dist. Ct., No. 232 L. C.,) may be filed in this case, and said deposition shall be considered as taken herein.

TULLY R. WISE,
Acting M. S. Dist. Att'y.
A. P. CRITTENDEN,
Att'y for Claimants.

Filed Feb'y 17, 1860.

W. H. CHEVERS, *Clerk.*

112 District Court of the United States for the northern district of California.

Admission.

THE UNITED STATES } No. 103 D. C.
vs. }
JOHN ROLAND. } No. 232 L. C.

It is admitted that on the 22d day of July, 1845, a grant was made by Gov'r Pio Pico to John Roland and Julian Workman of four leagues of land in the present county of Los Angeles, California, and that the claim of said grantees has been presented and finally confirmed.

Also, that on the 6th day of May, 1846, a grant was made by Gov'r Pio Pico to Luis Arenas and John Roland of the sobrantes surplus lands) of the ranchos of "Los Huecos" and "Pala," to the extent of nine leagues in the present county of Santa Clara; that the actual extent of said surplus lands has not been ascertained; that the claim for the same was presented before the board of land commissioners in the names of J. L. Hornsby (claiming under Luis Arenas) and John Roland, and was rejected by the board; that the claimants appealed from the decision, and the case is now pending in

113 this court. And it is admitted that the said Julian Roland—mentioned in the two grants above referred to—is the same person who is the appellant in this case No. 103.

March 12, 1862.

A. P. CRITTENDEN,
Att'y for Roland.
P. DELLA TOUVE,
For U. S.

Filed March 12, 1862.

W. H. CHEVERS, *Clerk.*

114 In the District Court of the United States for the northern district of California.

Stipulation admitting testimony in 103, *&c.*

THE UNITED STATES
vs.
JOHN ROLAND AND J. L. HORNSBY. } No. 221 Dist. Court. No. 282 Land Com'n'r.

It is stipulated and agreed that the above-entitled cause shall be submitted and considered in connection with the case of the United States vs. John Roland, No. 103 Dist. Court, the testimony in which given on either side shall be considered as given in this case, and that in making up the transcript in this case on appeal to the Supreme Court, if such appeal be taken by either party, any of the testimony or papers in said case No. 103 shall be incorporated therein which either party may consider material, and shall direct to be so incorporated.

San Francisco, June 2d, 1862.

N. P. CRITTENDEN,
Att'y for Claimants.
W. H. SHARP, *U. S. Att'y,*
By JNO. B. WILLIAMS,
Att'y in aid.

Filed Aug. 5, 1862.

115 W. H. CHEVERS, *Clerk.*

116 *Opinion rejecting claim.*

THE UNITED STATES
vs.
JOHN ROLAND. } No. 221.

The claimant in this case produces the support of his claim on expediente from the archives and the original titule or grant delivered to himself.

The expediente is composed of: 1. A petition by Luis Arenas and John Roland, soliciting "the vacant lands at the place called Las Animas and Canada de Pala, belonging to Don Carlos, towards Jose de Jesus Bernal, including the lands of the cerro colorado, towards

the slope of the valley to the extent of 9 leagues," a map of which they offer to present at a convenient time.

This petition is dated May 5, 1846. On the same day the governor, by a marginal order, directs the decree of concession to be made out and the title to issue. The decree of concession and the forrader or draft of the title constitute the remainder of the expediente. They are both dated on the succeeding day, May 6th. The genuineness of these papers and of the title produced by the claimant is not disputed by the counsel for the U. S. It will be
117 observed that the petition was unaccompanied by a disenio, and that the description of the land was vague and loose.

No informes were asked for or inquiry made as to the condition of the land or the qualification of the parties.

The whole proceeding was begun and consummated within two days.

No evidence has been offered to show that either of the grantees ever settled or attempted to settle on the land. It does not even appear that they even visited it. Certainly no disenio or map of it was presented, as promised in their petition. Nor is it shown that a sobrante of the extent of 9 leagues or indeed any sobrante whatever, exists between the ranchos named in the grant.

The case is thus barren of all equities. The claim rests on the bare fact that the governor, without informes or investigation and with no time for , saw fit to sign a title paper for a tract of land, supposed to exist, and that this title paper has been by the parties without the performance of a single act to assist their title or perfect their rights.

118 Under the views originally entertained by this court, a claim of this kind would have been unhesitatingly rejected for want of occupation and settlement, which was considered essential to create in the holder of an unapproved grant any equities which the U. S. were bound to respect. Those views, however, are understood to have been overruled by the Supreme Court in the case of Fremont. It was there held that the unapproved grant of the governor passed a vested interest to the grantee.

That possession and occupation were not necessary to complete the title thus conveyed, and that it would be forfeited in those cases only, where the grantee had so unreasonably neglected the performance of the conditions as to justify the inference that he had abandoned his claim during the existence of the former government.

As the time allowed for settlement and occupation was usually one year, it is evident that with respect to the numerous grants made by Pio Pico towards the close of his career, neglect to fulfil the conditions during the time that intervened between the dates of the grant and the change of flags, could not be received as
119 justifying the reference.

The excuses, too, which were received by the Supreme Court as sufficient, viz: the hostility of the Indians and the disturbed state of the country, can, in almost all these cases, be urged with the same force as in Fremont's case.

It follows that with respect to the later grants of Pio Pico, the neglect to comply with the conditions can thereby, under the ruling in the case of Fremont, be urged to defeat the claim.

But it may be doubted whether the Supreme Court will adhere to the rule thus laid down. The later cases seem to justify the inference that [that] when the point is again presented the rule will, in its application to future cases, receive important qualifications.

Certainly the case at bar presents the objections to its adoption, in the strongest light. But the case of Camberston (2d Howard, 59) appears, in many respects, analogous to that under consideration.

In that case great emphasis was laid upon the fact that no informes were asked for, nor any of the preliminary "conditions complied with which enabled the governor to make the grant."—(P. 63.)

120 "The court," it is declared, must look to the "laws and regulations both for the power to make the grant and for the mode and manner of its exercise, and they are to be substantially complied with except so far as modified by the usages and customs of the government under which the titles are derived, the principles of equity and the decisions of this court."

Much stress is also laid upon the fact that "the grant was made so near the time when the governments of the Territory passed from the governor's hands, and [and] indeed during the very heat of the struggle in which his power was overthrown."

The grant in that case was dated May 23, 1846. In this it is dated May 6, 1846.

The inquiry, therefore, in these cases is not merely whether the governor in fact signed and delivered a paper purporting to be a grant on a particular day, but whether in so doing he acted in the fair and regular exercise of his powers under the laws and regulations, and with the bona fide intention of carrying out their policy. It is, I think, impossible that the governor, in directing this title to issue without informes or investigation, and on the very day

121 the petition was presented, for lands vaguely described, and which the parties had never occupied nor settled upon, can be deemed to have so acted. On the whole, I think that this claim is without merit and should be rejected.

Filed May 12, 1863.

W. H. CHEEVERS, *Clerk.*

122 At a stated term of the District Court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Monday, the 30th day of December, in the year of our Lord one thousand eight hundred and sixty-seven. Present the Hon. Ogden Hoffman, district judge.

Notice of appeal.

JOHN ROLAND *et al.* vs. THE UNITED STATES. } District Court No. 221. Land commission No. 282.

This day came the said claimants, by their attorney, and on their application made in open court, it is ordered by the court that an

appeal in behalf of said claimants from the final decision of this court rendered in this cause at the present term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

OGDEN HOFFMAN,
Dist. Judge.

Filed Dec. 30, 1867.

GEO. E. WHITNEY, *Cl'k,*
Per S. NEALL, *D. C.*

123

Citation with service.

124 UNITED STATES OF AMERICA, *ss*:

To the United States of America, and also to Delos Lake, esq., United States district attorney in and for the district of California, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, District of Columbia, on the first Monday of December next, pursuant to an appeal (and an order of appeal) taken and filed in the clerk's office of the District Court of the United States in and for the district of California, on the 30th day of December, 1867, in a certain land claim lately pending and determined in said District Court, wherein John Roland et al. were claimants for the place called "Los Huecos" and are now appellants, and the United States, appellee, to wit: case number 221, which was appealed to said District Court from the decree of the United States board of land commissioners pursuant to the provisions of the act of Congress approved March 3d. 1851, entitled "An act to ascertain and settle the private land claims in the State of California," to show cause, if any there be, why the judgment and decree of said District Court, so appealed
125 from, rejecting the claim of the claimants therein, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the United States.

OGDEN HOFFMAN,
Dist. judge.

Filed Jan'y 3d, 1868.

GEO. E. WHITNEY, *Cl'k,*
By S. NEALL, *D. C.*

Service of a copy of within citation accepted this 3 Jan'y, 1868.
R. F. MORRISON,
Acting U. S. Att'y.

It is hereby stipulated that the foregoing transcript on appeal, to wit, in case No. 221, contains all the evidence, oral and documentary, that either party desires incorporated therein under the terms of the stipulation found on page 114 hereof.

San Francisco, November 11th, 1868.

DELOS LAKE,
U. S. Att'y Dist. California.

126 I, George E. Whitney, clerk of the Circuit Court of the United States in and for the circuit, and ex-officio clerk of the District Court of the United States in and for the district of California, do hereby certify that the annexed and preceeding one hundred and twenty-five consecutively numbered pages, and plat or deseno inserted between pages 47 and 49 and numbered page 48, exhibits a full, true and correct transcript of the record on file (in the clerk's office of said District Court) from the board of land commissioners, together with the admissions, stipulations, orders, opinions and decree filed in the office of the clerk of said District Court, entitled, pertaining and relating to the case No. 221, entitled "The United States vs. John Roland et als.," and the same constitutes a full, true and correct transcript on appeal.

In witness whereof I have hereto set my hand and affixed the seal of said District Court, this 12th day of November, A. D. 1868.

[SEAL] GEORGE E. WHITNEY, *Clerk.*
By SAMUEL NEALL, *D. C.*

U. S. vs. Rolandi

17 How — p. 557

18 How — p. 7

10 Cal p. 614 —

Regulations of Mexico

10 Cal p. 635 —

1 Wallace p. 329.

p. 357.

Treaty & Statutes Art 8 p. 359.

See also

Sontard vs. U. S.

4 Peters 511

Sebastus vs. U. S.

9 Peters 133

IN THE

Supreme Court of the United States.

No. 204.—December Term, 1869.

JOHN ROLAND and J. L. HORNSBY, Appellants,

vs.

THE UNITED STATES.

Brief for Appellants.

M. BLAIR,
F. A. DICK,
Counsel for Appellants.

J. L. Pearson, Printer, corner 9th and D streets.

IN THE

Supreme Court of the United States.

No. 204.—December Term, 1869.

JOHN ROLAND and J. L. HORNSBY, Appellants,

vs.

THE UNITED STATES.

Appeal from the District Court of the United States for the Northern District of California.

Brief for Appellants.

Statement.

Under the act of March 3d, 1851, establishing a board of commissioners "to ascertain and settle private land claims in the State of California," the appellants filed their petition on the 6th of July, 1862, claiming the vacant or surplus lands which remain in the place called Las Animas, and in the Rancho de Pala, belonging severally to Charles Weber and to José de Jesus Bernal, including also the lands of the Red mountain, towards the valley. The claim was rejected by the board of commissioners on the 21st November, 1852, and on appeal was also rejected by the district court on the 12th of May, 1863. It is here on appeal from the district court.

ARGUMENT.

The objections to the confirmation by the board were:

(1.) That the grant was not approved by the departmental assembly.

(2.) That the grantees were never in possession.

(3.) That there is nothing to show that a surplus or sobrante existed in the place called Las Animas and in the Rancho de Pala, after satisfying the grants to Weber and Bernal.

(4.) That the usual inquiry in the *informe* was not made.

With respect to the first three objections of the board little need be said. These objections were all overruled by this court in Fremont's case, 17 Howard, 542, and the decision on these points has been repeatedly affirmed since in other cases. In Fremont's there was no survey, no deseño, no possession, and no approval or even submission to the departmental assembly. This court held that the grant by the governor vested an interest in the land in the grantee, and that the only question was "whether anything done, or omitted to be done, by the grantee, during the existence of the Mexican government in California, forfeited the interest he had acquired and reinvested it in the government." As there had been no denouncement within that time, and there was no evidence of abandonment, this interest had not been divested by the delay in taking possession, (pp. 560, 565.) The court also overruled the insufficiency of the description in that case, and observed that "the grant conveyed a vested interest in the quantity of land mentioned in the grant, to be afterwards laid off by official authority in the *territory* described."

In Larkin's case, 18 Howard, p. 557, there was no description and no possession. In United States vs. Rodrigues, 1 Wall., p. 588, the court says, that in some of the cases the decree of confirmation defined the land, whilst in others the grant only was confirmed, leaving it to the surveying department to ascertain the boundaries. And it

may be observed that this was the ordinary course of commissions and courts in acting upon the French and Spanish grants in the Louisiana purchase.

And from the peculiar circumstances of this grant there could have been no greater certainty of description given than the grant contains. The quantity granted is to be taken from within the boundaries of the two earlier adjoining grants, the Las Animas and de Pala, extended to the Red mountain and valley, if need be, to obtain the quantity. The petitioner could not furnish a deseño till the grants to Bernal and Weber were satisfied.

In reference to the *informe*, the provision of the 3d article of the ordinance of 1828 is that "the governor shall proceed immediately to obtain the necessary information whether the petition embraces the requisite conditions required by the law of the 18th of August, 1824. * * * Or, if it be preferred, the respective municipal authority may be consulted whether there be any objection to making the grant or not."—(Rockwell's Mex. and Span. Law, v. 1, p. 453.)

As the governor certifies in the grant that he had fully informed himself as to the preliminary facts required by law to the making of the grant, the reference to the municipal authorities which he was at liberty to make, in case he did not otherwise obtain the information, became unnecessary. This construction of the article was adopted by this court in the case of The United States vs. Johnson, 1 Wallace, 326.

This court says: "The record does not show the usual reference for information; but the grant by Pio Pico, dated 18th July, 1845, recites that the necessary steps and investigations were previously taken and made in conformity with the laws and regulations."

Moreover, it is a well settled principle that when a patent is produced all previous steps required by law before its emanation are presumed.—(Polk's Lessee vs. Wendell, 9 Cranch, 87; Patterson vs. Winn, 11 Wheat., 383.)

The authority given to the President to direct the sale of the public lands by act of March 3, 1811, is for the sale of such land "as shall have been surveyed in conformity with the 9th section of this act." We do not require proof of this fact before admitting a United States patent in evidence, or that the President issued his proclamation, without which the land could not have been sold. All such directions are presumed to have been complied with when a party produces the evidence of entry from the proper officers.

Is there any reason for enforcing a stricter rule with reference to Mexican titles? Were their officials more restricted in their powers in reference to lands than ours? We know that the contrary is true. They were authorized and required to give away these lands in quantities to promote emigration to a then uninhabited region. The governor was only enjoined to see that the grant solicited did not conflict with prior rights, and that the quantity granted, not exceeding eleven leagues, was suitable to the grantee. The national faith was pledged to make every applicant a grant of land on these conditions, and the governor was vested with the power to judge of their existence, subject only to the approval of the departmental assembly. He was required to report to the central government, but not in detail—only results—for information, not supervision or ratification.

The district court rejected this claim on the ground that it was similar to Cambuston's case, 20 Howard, 59. The resemblance consists only in the absence of the *informe*, and that they are both grants by Pico, one (this) dated 6th of May and the other 23d May, 1846. But these circumstances, though mentioned by the court in its summary of the deficiencies which characterized Cambuston's case, were not the controlling considerations. This appears by the decision in Cambuston's case, but it is still more conclusively established by the fact that the court confirmed Johnson's case, (1 Wall.,

326,) when there was no *informe*, and Yorba's case, (ib., p. 413,) a grant by Pico, made more than a month later than this.

The circumstance which decided Cambuston's case was that the grant itself was deemed fraudulent. Neither the grant itself or any record of it was found in the archives. This is the rule, and the full extent of it, as shown in Romero vs. The United States, 1 Wall., 721, which refers to Cambuston, 20 H., 59; Teshmaker, 22 ib., 392; Fuentes, ib., 443; Osio, 23 ib., 280; Bolton, ib., 341; Lucco, ib., 515; Palmer, 24 ib., 126; Castro, ib., 346; Neleigh, 1 Black., 298; Knight, ib., 229; Vallejo, ib., 351; and Galbraith, 2 Black., 394; and Pico vs. United States, 2 Wall., 279; and Peralta, 3 Wall., 434—have since been decided on this rule.

But this grant stands upon entirely a different footing. No question was made below as to its authenticity. "The genuineness of these papers, and of the title produced by the claimant, is not disputed by the counsel for the United States," says the district court, (page 44.) Its genuineness is recognized by the district judge, both in his opinion in this case and in the opinion in the case of John Roland's claim for 11 leagues on the Stanislaus and San Joaquin rivers. The genuinenes of this grant, indeed, forms the "*strongest*" objection to that, and the decision of the court in that case rests entirely on this fact.—(See conclusion of opinion, p. 77 of Record, in that case.) And in that view this court concurs.—(8 Wall.) In that case the district court says: "But the strongest argument, to show that the alleged grant was not issued to Roland, is the fact that on the 6th day of May, only four days after its date, Pico granted to Arenas and John Roland nine leagues in the jurisdiction of San José Guadalupe. He had already granted to Roland and Zoockman four leagues of land. If, then, on May 2, he granted to him and another nine leagues, we must suppose the governor to have committed a flagrant violation of the

law under which he derived his powers. All of these last grants are claimed to be genuine, and have been presented for confirmation. *That of May 6th bears every mark of authenticity.* The only hypothesis, therefore, on which we can acquit the governor of wilful departure, not only from the spirit but the letter of the colonization laws, *is that suggested by the United States, viz: that the proceedings in relation to the eleven-league grant were suspended, the application abandoned, and a petition presented, and a grant obtained for another tract.*"—(P. 76.)

This reasoning is adopted by this court in passing on that case. The court says:

"The strong probability is, that the eleven league grant was abandoned when the petition was presented and the grant obtained for other lands in a different part of the country. * * * It may be, before the proceedings were completed for the eleven league grant, he saw his difficulty, and concluded to rely on the first grant made to him, and to ask for a concession for other lands nearer the settled part of the state, and which lands, although less in quantity, were more desirable. Adopting this theory, the conduct of Roland, in asking for other lands, can be explained."

The United States cannot in fairness impeach this grant after thus successfully urging its validity to defeat the eleven-league grant to Roland.

M. BLAIR.
F. A. DICK.

IN THE

Supreme Court of the United States.

No. 204.—December Term, 1869.

JOHN ROLAND and J. L. HORNSBY, Appellants,

vs.

THE UNITED STATES.

Brief for Appellants in reply to the argument of the Attorney General.

M. BLAIR,
F. A. DICK,
Of Counsel for Claimants.

Jos. L. Pearson, Printer, cor. 9th and D sts.

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Brief for Appellants in reply to the argument of the Attorney General.

The defendant's counsel deny the validity of the grant,—

I. Because not legally proved.

II. Because insufficient in legal effect.

I. The first point of argument of counsel of the defendant merely urges that the original grant produced by claimant was proven by only one witness.

The answers to this objection are:

1st. That the petition filed July 6, 1852, referred to a copy of the grant and expediente as then in the United States records, in the surveyor general's office.

2d. On 18th October, 1852, the original grant was proven to be genuine by deposition of Ignacio Del Valle, taken before one of the land commissioners, the United States Consul being present.—(Page 2 of Record.)

3d. After two years, on 21st November, 1854, the land board hear the claim and treat the grant as genuine, without a question; and they recite in their opinion also that

"a traced copy of an expediente from the archives of the Mexican government, now in the custody of the United States surveyor general, duly certified, is filed in the case." —(Page 38.)

4th. When the claim again came up before the United States district court on 12th May, 1863, all of the title papers are treated as genuine, and the counsel of the United States acquiesced in such conclusion of fact. The court below say of the original grant and expediente: "The genuineness of these papers, and of the title produced by the claimant, is not disputed by the counsel for the United States."

5th. In the associate case of John Roland v. The United States, (No. 50 of December Term, 1869,) Judge Hoffman, in his opinion on the very point of genuineness of the grant there by Pico to the claimant, speaks of the grant in the case at bar as one having the signature of Pico, with its peculiarities, thus: "Documents are produced from the archives of *undoubted authority*, dated respectively on the 1st, 2d, and 3d of May, on which Pico's signature appears, exhibiting its uniform and striking characteristics. The claimant himself produces an expediente and titulo of a grant to Arenas and him, dated May 6th; *on these documents*, as on those presented by the United States, the signature of Pico is in his usual style. In the case of Luco v. The United States this court had occasion to investigate at length the evidence furnished by archives as to the uniformity and peculiarities of Pico's signature."

6th. The case at bar and that of John Roland vs. The United States were submitted to the district court under stipulation that they were to be "considered in connection." And it was admitted in that case that, on 22d July, 1845, Governor Pico granted to John Roland and J. Workman four leagues of land, and on 6th May, 1846, granted to John Roland and Arenas nine leagues, (by the grant involved in the case at bar,) thus giving him the

one-half of thirteen leagues, or six and one-half leagues. As he could receive only eleven leagues in all, under the Mexican law, the residue he was entitled to was only four and a half leagues. The claim made in that case was on a grant for eleven leagues. The use made of the above admission, that the grant of May 6, 1846, was effctual, is shown by the conclusion of Judge Hoffman in his argument, that it precluded Pico from making the grant then in question, and he puts it as the *strongest argument* in the case. Thus: "But the strongest argument to show that the alleged grant was not issued to Roland, is the fact that, on the 6th May, only four days after its date, Pico granted to Arenas and John Roland nine leagues. He had already granted to Roland and Workman four leagues. If, then, on May 2d he granted to him eleven leagues, and on May 6th he granted to him another nine leagues, we must suppose the governor to have committed a flagrant violation of law. All of these last grants are claimed to be genuine, and have been presented for confirmation. *That of May 6th bears every mark of authenticity.*"—(Page 76 of Record in Roland vs. United States.)

II. The second objection is that the grant is insufficient in legal effect, and for this reason the claim was rejected by the board of land commissioners and the district court.

The error of their decision is, that they refused to accord any effect to the final act of the governor, namely, issuing the grant, and they held that, on the facts before him, he should not have issued it.

The principle on which the board reject is stated by them, after enumerating certain objections, such as want of evidence of approval by departmental assembly, and insufficiency of description, thus: "But even if this difficulty was obviated, the absence of any evidence of the performance of the conditions, *which, according to the rules*

laid down by the board, is required in all cases, * would be fatal to a confirmation of the claim."—(Record, p. 38.)

This decision was 21st November, 1854, and at the December term, 1854, Fremont's case was decided by this court (17 How., p. 557–8,) overruling these objections.

See also United States vs. Reading, 18 How., 6, 7; United States vs. Larkin, 18 How., 557; United States vs. Sutherland, 19 How., 363; United States vs. Johnson, 1 Wall., 326.

The district court, in 1863, acknowledged, in rejecting this claim, that it disregarded the principles established in Fremont's case, and prefers to adhere to the rules originally laid down by the district court, of rejecting grants for non-compliance with conditions subsequent. The court say, (p. 44 of Record,) "Under the views originally entertained by this court, a claim of this kind would have been unhesitatingly rejected for want of occupation and settlement, which was considered essential to create in the holder of an unapproved grant any equities which the United States were bound to respect. Those views, however, are understood to have been overruled by the supreme court in the case of Fremont." The district court then proceed to show that, according to the principles established in Fremont's case, this claim would be confirmed, and add, "It follows that, with respect to the later grants of Pico, the neglect to comply with the conditions can (NOT) thereby, under the ruling in the case of Fremont, be urged to defeat the claim.

"But it may be doubted whether the supreme court will adhere to the rule thus laid down. * * Certainly the case at bar presents these objections to its adoption in the strongest light."

Finally, the district court having shown that it was deciding contrary to the established decisions of this court, strives to find a new principle on which to base its decision and announces it thus:

"The inquiry, therefore, in these cases is not merely whether the governor in fact *signed and delivered* a paper purporting to be a grant on a particular day, but whether in so doing he acted in the *fair and regular exercise of his powers* under the laws and regulations, and with the *bona fide* intention of carrying out their policy. It is, I think, impossible that the governor, in directing this title to issue, (1,) without *informes* or investigation; (2,) and on the very day the petition was presented; (3,) for lands vaguely described; (4,) and which the parties had never occupied or settled upon, can be deemed to have so acted."

This rejection of the claim is based on the dissenting opinion of Mr. Justice Campbell in Larkin's case, (18 How., 557, 564,) who says: "The papers purport to have been made during the four first days of November, 1844. * The usual inquiries could not be made, for the party interested was charged with the performance of that duty. * The patent issued on the 4th November, 1844, subject to the conditions, &c. No act was done during 1844 or 1845, or the early part of 1846, which indicates any claim on his part to this land. * * Neither Jimeno nor Larkin entered upon or occupied the land. * * I lay no stress upon the fact that the papers are found in the archives. * I dissent from the judgment of the court confirming this claim."

The opinion of the court in the case of Larkin, by Mr. Justice Nelson, (p. 558,) states the title as follows:

1st. A petition by M. Jimeno (secretary) to Micheltorena (governor) for a rancho *about* the Sacramento river "according to the accompanying sketch." Since it is unoccupied, * "as is made apparent by the general map formed this year by the land surveyor, Bidwell."

This is dated Nov. 1, 1844.

On same day is an order by Micheltorena that, as the party concerned cannot report, he orders the information; on the 2*d of November* he orders the patent to issue for eleven leagues; on the 4th November the patent issues

for land not described at all, thus: "for the tract of land which is unoccupied between the rancho which has been patented to the children of Larkin, the river Sacramento, and the uncultivated lands which are on the side of the south, entirely in conformity with the showing in the corresponding plan."

It contains no condition of submitting it to the departmental assembly. On 21st April, 1846, Jimeno applies to departmental assembly for approval, but there is no evidence of its approval.

On 30th August, 1847, conveyed by Jimeno to Larkin, and no possession prior to that.

The court in overruling the objections say: "The plan or sketch found in the expediente, *in connection with the* description given in the grant, furnished all the materials essential to establish the boundaries. Three sides are given, and the quantities will guide the surveyor in drawing the lines."

"It has been suggested on the argument here, that this grant is a fictitious one. One answer to this is, that no objection as to the *bona fides* of the grant was taken before either of the tribunals below, where it should have been made if relied on by the government, so as to have given the claimants an opportunity to have met it."—(P. 561.)

Next: The court next answers the want of approval by departmental assembly; * next, of judicial possession; * next, absence from the grant of usual conditions.

This was followed up by the same character of decision by Mr. Justice Grier, in Sutherland's case.—(19 H., 363.)

In Sutter's case, (21 How., 170, 174,) the grant was never recorded, and not produced, and yet was confirmed on a mere copy of it produced from the *county* records.

III. The record evidence in this case.

Petition asks for the vacant lands to extent of nine agues, which remains from two other known ranchos,

"a map of which land they offer to present at a convenient time," dated May 5, 1846. They refer to the other ranchos by name and occupancy, as belonging to Weber and Bernal, (p. 2 and p. 13, is a stipulation dated October 18, 1854, that the papers and evidence in the cases of those two ranchos "shall form part of the record herein.")

On page 14 is the title of *Weber* set out, containing a *map*, &c.

Page 19, *et seq.*, gives the Bernal expediente, beginning with a grant to Tomas Brown, of 2 leagues, for the places named "Canada, San Felipe y las Animas," bounded by the rancho of Don Jose Bernal, by that of Don Jose Chavalla, by that of Don Juan Alvizo, and of the Sierra of Santa Y sabel."—(P. 20.)

This grant approved by departmental assembly May 21, 1840.—(P. 21.)

Weber claims under Brown and Garcia.—(P. 15.)

The title to the Bernal rancho is set out page 28, 38.

On page 37 is the petition, dated April 25, 1839, asking for the grant of the "Canada de Pala, and as it appears by the annexed plan."

On 10th August, 1839, the grant was made.—(P. 38.)

The proof in that case shows possession by the Bernals, thus: "The Bernals have always occupied the land ever since it was granted to them to the present time. They have large houses of adobes upon it which are occupied by their families. I saw houses there five or six years ago; they had corrals on the land with cattle, and they cultivated the premises." This proof was in 1853.—(P. 29.)

On page 32 is deposition of Antonio Chabrya, taken November 8, 1854, who says he owns an adjoining rancho, and proves the occupancy of the adjacent ranchos by Bernal and Charles Weber.

Page 33 is deposition of J. Noriega to same effect.

On page 34 is testimony of J. A. Forbes, taken Decem-

ber 28, 1854, who testifies to a *map* made by him to show the locality of the Bernal rancho, and which was made according to the possession.

These documents and depositions make a part of the record in this case, and serve to identify and describe the land.

The case of The United States v. Aguirre, (1 Wallace, 311,) is similar to that at bar.

There the petition was for what remained vacant from two other ranchos. The board rejected the claim because the expedientes in the other cases were not filed.—(P. 11 of that record.) Adding: "These maps and the proceedings in the other cases are most obviously necessary parts of the proofs in this case, but none of them are presented in it."—(Ib., p. 11 of record in that case.)

On the trial before the district court the expedientes in the other cases were given in evidence, and the court confirmed the claim in these words: "The lands hereby confirmed are the sobrante or surplus remaining within the boundaries of the tract of land called San Jacinto, as the same are represented and described in the map of said tract contained in the *expediente of Miguel Perorena*, filed in this case, &c., to the extent of eleven leagues, and if the sobrante or surplus within said boundaries shall be less than eleven leagues, then confirmation is hereby made of such less quantity."

On inspecting the brief of the special counsel of the United States, on appeal here from the confirmation in that case, his second point is in these words: "The claim is not legally proved;" and his argument explains his meaning to be, that the officials who signed the grant were the only competent witnesses to prove their execution; he says: "The official witnesses, the governor and secretary, were not called," &c. He adds: "This objection is no doubt well taken, and if there was any well-founded suspicion of the genuineness of this grant, advantage should be taken of *this matter of form*."

His 3d point is, "that the boundaries of the grant are vague and indefinite. This is the chief ground and the only tenable ground on which the claim was rejected by the commissioners. They applied to it the old and strict doctrine of segregation by fixed and definite boundaries. But the doctrine on that subject, subsequently established in the case of Fremont, (17 How., 558,) relieves this case from all difficulties on that score." And the counsel proceeds to demonstrate that, with the expediente in the other cases, how plain it is to ascertain what is granted, thus: "The out boundaries of the adjoining ranchos being given, and the boundaries of the old and new Jacinto fixed and determined, the residuum is necessarily the subject of this grant."

The grant in the case at bar reads thus: "The land hereby granted is nine leagues of the largest size, and is situated in the surplus or vacant lands of the ranchos of Don Carlos Weber and Don Jose Bernal, including the lands of the Cerro Gordo towards the valley. The judge who shall give the possession shall have it measured, in conformity to law, in view of the maps which will be presented by the parties interested."—(Record, p. 7, in this case.)

Here is a precise quantity granted at a designated locality.

Fremont's grant was a vague right to locate ten leagues within an unoccupied space of over 100 leagues; it was for the tract of land to be called by the name of Mariposas, to the extent of ten square leagues within the limits of the Snow mountain and the rivers Chanchilles of the Merced and the San Joaquin.—(17 How., p. 545.) Mr. Cushing, remarking on the errors and looseness of this, says: (17 H., p. 549.) "Alvarado petitioned for lands which he had never seen and of which he had no description. He asked for lands north of the San Joaquin, supposing that river to run to the west; and west of the Snow mountains, and between the Chanchillos and Merced

rivers, apparently supposing that they run south and enter into the first named river, and that the tract contains ten square leagues, when it includes over one hundred."

Alvarado says in his petition, (p. 544,) "offering to present to your excellency the proper *plan and draft* thereof as soon as the same shall be made with exactness, not doing it at this time for the difficulty of being a wilderness country," &c.

The grant makes no reference to this plan, and the plan never was made.

In Higueras v. The United States, (5 Wall., 827,) it is said Mexican grants are of three kinds: 1. By specific boundaries; 2. By quantity within a larger tract; 3. Grants of a certain rancho by name.

See also Alviso v. United States, (8 Wall., 337,) where the grant was held to be for quantity. "Neither of the title papers gave any boundaries of the land, or referred to any documents by which the boundaries could be ascertained, except the map mentioned. This map was a rude and imperfect sketch, indicating only the general locality of the land, without fixing with any precision its exterior limits."—(Ib., p. 338.)

IV. The record of this title is complete.

1st. Is the petition by John Roland and L. Arenas to the governor, dated May 5, 1846.—(P. 6.)

2d. On this is endorsed the order for the title to issue.—(P. 6.)

3d. The formal grant, which recites "the necessary steps having been taken and inquiries made."

The petition designates the locality sufficiently by giving two ranchos, which the proof shows were occupied, built upon, and long used, and which have now been officially surveyed and patened.

"As only the vacant lands which remain at the places" designated were asked for, and as the land granted "is situated in the surplus or vacant lands of the ranchos" of

Weber and Bernal, and as the expedientes for these ranchos were public records, it is plain that it was in the power of the governor, without a report from the neighboring officials, to ascertain if the land could be granted; and the nature of the grant, when made, shows he intended interfering with no private rights and disposing only of public domain.

The foregoing documents are the expediente found in the public archives. This appears from the petition, which says: "In support of their claim they refer to the copy of the expediente certified by the surveyor general of the United States, marked A, the translation thereof marked B, the copy of the grant marked A, and a translation thereof marked D, all of which are herewith filed." —(P. 2.) The petition and the copy of this expediente are both marked, filed July 6, 1852, before the land commission.—(Pp. 2 and 7.) In the opinion of the commissioners, (p. 38,) and of the district judge, (p. 43,) this expediente is said to come from the archives, and duly authenticated, and yet the special counsel of the United States urges the court to reject the claim on the ground that the expediente has not the formal certificate of the surveyor general. He says—(p. 4 of his brief)—"An expediente purporting to be from the Mexican archives, and to be certified by the surveyor general. * But there is no such certificate in the record, and we know from the number of the expediente that it forms no part of the original Mexican archives. It is not on the Jimeno index of grants, which includes only 433 grants, and no other original Mexican record is produced to authenticate the grant."

The counsel is for requiring impossibilities. He says this expediente "is not in the Jimeno index." How could it be, when that index embraces grants from the year 1830 up to the 24th of December, 1844, only.—(1 Hoffman's Cal. Rep., 437. See also Hopkins' testimony set out below.) The counsel adds, "and no other original Mexican record is produced to authenticate the grant."

And yet, in fact, according to the experienced and learned Mr. Hopkins, this very expediente is not only an "original Mexican record," but the only one ever made of grants in 1846. The counsel does not by name refer to any other document as an "original Mexican record," excepting Jimeno's index. But nowhere is this index described as a record, and this court has repeatedly spoken of it as a mere private writing, made of his own motion, by the secretary, Jimeno. In United States v. West, (22 How., 317,) the court say: "We do not regard that catalogue of grants as authoritative proof of grants enumerated in it, or as a conclusive exclusion of grants not so registered by Jimeno." In De Haro v. United States, (5 Wall., 618, 626,) this index was pressed upon the court as a record, and they refused to so treat it.

If Toma de razon is an "other original Mexican record" referred to in the brief, it may be answered that it has no higher authority than Jimeno's index, and includes grants made only in the years 1844 and 1845; and therefore could not contain the grant in question. Mr. Hopkins shows that no such record as is required by the counsel was kept in 1846, and he also says, that the original expedientes were not numbered in sequence of dates, thus showing that the counsel's inference from the number is an error of fact arising from his believing that there is no genuine grant of higher number than designated on Jimeno's index. This test would reject all grants made in the years 1845 and 1846.

The following extracts are from the deposition of R. C. Hopkins, taken in case of Roland vs. United States, beginning page 47 of Record. In that case he says (p. 48) he is keeper of the Spanish archives, in the surveyor general's office, and has been since 1855.

Q. 13.—(P. 49.) "Please examine the proceedings of the departmental assembly in the year 1846, and state how many expedientes were submitted to it that year, and at what dates."

A.—"On March 9th, one; March 16th, seven; May 8th, forty-five; June 3d, several; June 10th, three."

Q. 14th.—(P. 50.) "Do these expedientes appear to have been acted on by the departmental assembly?"

A.—"It is impossible to tell whether they all were or not, as in some cases the aggregate number is only mentioned, without specifying the grant."

Q. 34.—(p. 53.) "Is there to be found amongst the archives any books of record, showing petitions presented and grants made, with maps of the lands granted, any such book as is required to be kept by the regulations of 18th November, 1828, or any thing resembling such book?"

A.—"There is no such book or record found in the archives; the nearest approach to any such record are the expedientes on file in the archives."

Q. 35.—"Is there any trace whatever amongst the archives, of the existence of any such book of records at any former time?"

A.—"There is not."

Q. 36.—"Have you ever heard of the existence of any such book?"

A.—"I have not."

Q. 37.—"If any such book had ever existed, would not your inquiries into the condition of the archives have ascertained the fact?"

A.—"I think they would."

Q. 38.—"The expedientes of which you have spoken, are nothing more, are they, than loose sheets, upon which were written the various proceedings in reference to individual grants?"

A.—"The expedientes I have referred to are nothing more than such proceedings, written upon sheets of paper and stitched together. I presume, when concluded, endorsed and numbered by the secretary, and filed in the archives."

Q. 39.—"When you say 'stitched together,' do you re-

fer to the separate sheets relating to the separate grants only, or do you mean when the expediente was completed it was attached to former expedientes—made into anything like a book?"

A.—"Each expediente was stitched together separately, like a school-boy's copy book."

Q. 40.—"Do the records show that there ever was a single grant made in California of which a record was made, as required by the regulations of 1828, that is, in a book provided for that purpose, containing the petitions presented for grants, the grants made, with the maps of the land granted?"

A.—"They do not."

Q. 41.—"You say that the separate expedientes are numbered; do you mean to the time of their completion or subsequently?"

A.—"The expedientes on file in the archives do not appear to have been numbered in sequence of dates."

Q. 42.—"What evidence, if there is no record, do the archives furnish of the fact of the issuance of any grant since 1828?"

A.—"The only evidence to be found in the archives of the issuance of grants since 1828, are, first, the expedientes already referred to; second, a book in which titles are recorded, which were issued in 1833, '34, and '35; third, the index known as the 'Jimeno index,' embracing grants made from 1833 to 1844, inclusive; fourth, a *toma de razon* or registry of grants, issued in 1844, '45; fifth, an index known as the 'Hartnell index;' sixth, *toma de razon*, kept by prefects in 1843; seventh, journals of the departmental assembly from 1829 to 1846; eighth, official correspondence, in which grants are referred to; some loose maps and borradors in reference to grants. The record I have referred to, of 1833 to 1835, contains a copy of the entire grant or titulo, without the previous proceedings or maps."

Q. 43.—"In respect to grants issued in 1846, what evidence can the records furnish?"

A.—"*The only evidence the archives furnish of grants made in* 1846, are the expedientes referred to, journals of departmental assembly, the Hartnell index, official correspondence, borradors, &c."

Q. 44.—"According to the usual and regular course of business at the office in making grants, would the borradors and official correspondence furnish evidence of a grant made in 1846?"

A.—"Not necessarily. It would be only under some peculiar or special cases."

The district judge refers to the case of Cambuston.—(20 How., 59.) That was rejected because the grant was believed to be spurious; there was no trace of it found in the record—no expediente. There was one single writing referred to as documentary evidence, which purported to be a grant, and was handed by the claimant to the military authorities in 1850.—(P. 61.) The claimant did not, however, venture to produce this document before the commissioners or the district court. In rejecting that claim as a fraud, this court say: "The original document was not produced, either before the commissioners or the district court."

In the case at bar, the original grant is produced, and also the expediente containing the duplicate grant, the petition, and the concession.

With facts so different, the one case is no precedent for the other.

M. BLAIR,
F. A. DICK,
Of Counsel for Claimants.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

JOHN ROLAND AND J. L. HORNSBY, *Appellants*, *vs.* THE UNITED STATES. } No. 204.

Appeal from the District Court of the United States for the District of California.

STATEMENT OF THE CASE.

This is a claim for nine leagues or about 40,000 acres of land, in the county of Santa Clara, in the State of California, under what is called a Sobrante grant, dated May 6, 1846.

The grounds of the claim are stated in the petition filed before the Land Board. (Printed Record, p. 2.)

It was rejected by the Land Board, for the reasons given in ts opinion. (*Ib.*, pp. 38, 39.)

On appeal to the United States district court, it was also rejected, for the reasons given by Judge Hoffman in his opinion. (*Ib.*, pp. 43, 45.)

From the decision of that court the present appeal has been taken to this court.

As the record is in a very confused and unsatis-

factory condition, it may be useful to state clearly some of the preliminary facts of the case.

It appears, that on the 22d of July, 1845, a grant was made by Governor Pio Pico to John Roland and Julian Workman, for four leagues of land, in the county of Los Angelos, and that the claim of said grantees has been presented and finally confirmed. (Printed Record, pp. 41 and 42.) The number of that claim before the Land Board was 385, No. 127, in the United States district court for the southern district, No. 270 on the Jimeno Index, and 544 on the Hartnell Index. Under this grant, 48,790.55 acres of land have been confirmed to the grantees. (Hoffman's Rep. Land Cases, Appendix, p. 1, and note, p. 53.)

Two other claims have been presented by Roland—one for eleven leagues of land at the junction of the Stanislaus and San Joaquin rivers, under a grant purporting to have been made by Pio Pico, attested by Moreno, secretary, May 2, 1846. That claim was examined and rejected at the last term, and is reported in 7 Wallace, U. S. R., p. 743. That claim was No. 232 before the Land Board, No. 103 in the United States district court for the northern district, and No. 548 in Hartnell's Index. (Hoffman's Rep., Appendix, p. 1, and note, p. 33, printed Record, p. 42.)

In that case it was stipulated that the grant under which the present claim is made, existed, bearing date May 6, 1846. (7 Wallace, U. S. R., p. 750. See Record in that case, p. 69, printed Record, p. 42.)

The other claim made by Roland is the present, for 9 leagues, in Santa Clara county, under the grant before stated. This claim was No. 282 before the Land Board, No. 221 in the United States district court for the northern district, and No. 550 in Hartnell's Index. (Printed Record, pp. 1, 41, 43.)

In this case, as in the former, it is stipulated that, on the 2d of May, 1846, a grant was made by Pio Pico, then Governor of California, to John Roland, for 11 leagues of land on the Stanislaus river, and that the said John Roland is the same person who is one of the claimants in this case. (Record, p. 41.)

It was also stipulated and agreed that these two claims should be submitted and considered together, on the same evidence, by the United States district court. (Printed Record, p. 43.)

The opinion rejecting the first of these two claims was filed August 4, 1862, but the decree was not entered until May 13, 1863. (See Record in that case, p. 77.) The opinion of that court rejecting the claim in this case was filed May 12, 1863. (Printed Record in this case, p. 45.) The final action of the district court in both cases, was therefore nearly contemporaneous; but nearly a year intervened between the delivery of the opinions in the two cases. This accounts for some expressions used in the opinion in the first case, (which were adopted by this court in its opinion in 7 Wallace, U. S. R., pp. 750, 751,) looking to the probability or possibility that the grant in this case is genuine and valid.

But now that this court has the opportunity to examine the record in this case, it will be forced, like the district court, to reject the claim.

The two claims are inseparably connected, and both must share the same fate.

ARGUMENT.

I.

The grant is not legally proved. The only evidence offered in support of the authenticity of this claim is—

1st. The titulo or grant produced from the private custody of the claimant, accompanied by the testimony of one witness as to his belief of the genuineness of the signatures of Pico and Moreno. (Printed Record, p. 3. *Ib.*, p. 8.)

2d. An expediente, purporting to be from the Mexican archives of California, and to be certified by the Surveyor General of the United States for that State, No. 587 and 581. (Printed Record, pp. 2, 3, 5.) But there is no such certificate in the record, and we know from the number of the expediente that it forms no part of the original Mexican archives. It is not in the Jimeno Index of grants, which includes only 433 grants, and no other original Mexican record is produced to authenticate the grant.

But admitting that it was so certified, and that it is included in Hartnell's index of papers found in that office in the year 1847, when that index was made, still, that index is not a Mexican record, and it fur-

nishes no evidence of the truth of the date of an expediente or grant then found among them.. (Knight's case, 1 Black R., 227 ; Galbraith's case, 2 Black R., 394.)

The Journal of a session of the Departmental Assembly, held June 3, 1846, shows that on that day the expedientes of 45 grants previously made were acted upon and approved. The grants in the Roland cases, purporting to have been made May 2, 1846, and May 6, 1846, are not found among them. If these expedientees in the cases had then existed in the Mexican archives, can any good reason be given why they also were not submitted to that assembly and then approved? None has been given, and none can be given. *They did not exist at that time*, or they would have been so presented. The obvious interest of the grantees in having it done, is the best evidence of that fact.

There being no original Mexican archive evidence to authenticate the grant or its date, this claim must be rejected on the authority of a long line of cases.

Cambuston's case, 20 Howard R., 59; Castro's case, 24 Howard R., 346; Knight's case, 1 Black R., 2452; White's case, 1 Wallace R., 660; Pico's case, 2 Wallace R., 279, and other authorities cited in said cases.

II.

But admitting the grant to have been made May 6, 1846, it is *invalid*, because made contrary to the provisions of the colonization law of 1824, and the regulations of 1828.

1. The petition is defective in not showing the qualifications of the petitioners, as required by regulation 2. (Printed Record, pp. 5 and 6.)

2. It contains no map, as required by regulation 2. (*Ib.* p. 6.)

3. The Governor made no inquiry, as required by regulation 3. The petition purports to have been presented May 5, 1846, and the concession and grant to have been made May 6, 1846. (*Ib.* p. 6.)

4. The grant was not approved by the Departmental Assembly, as required by regulation 5, although in the decree of concession a special order is made that "the expediente shall be retained to be submitted for the approval of the Departmental Assembly." (Printed Record, p. 6.)

5. No judicial measurement of the land was made, or possession taken, as required by the second and third conditions of the grant, and by regulation 8. (*Ibid.* p. 6.)

6. No record has been made or kept, in a book ordered for the purpose, of the petition presented, of the grant made with a map of the land granted, as required by regulation 9.

7. The Governor did not fix the time within which the grantees should take possession and cultivate the lands granted, nor did they *ever* occupy or cultivate the lands, as required by regulations 11 and 12—in default of which, the grant is declared to be void.

III.

The grant is vague and indefinite in its description of boundaries. It is for a sobrante, or surplus of land, in two other grants. There is no evidence that any such surplus exists, or, if so, to show where the grant should be located. A map is a necessary part of such a grant; for want of which the grant is void for uncertainty. (22 Howard R., 226.)

IV.

But, waiving all defects of *form*, the claim must be rejected for *a total failure to comply with all the terms and conditions of the grant.*

It was a *colonization* grant, made with a view to the occupation and cultivation of the land. The grantees have never been in possession for an hour; nor have they shown anything to excuse them for this neglect.

They have, therefore, *no equity* entitling them to a confirmation of this claim. (23 Howard R., 497, 498; Pico's case, 2 Wallace R., 279; *ib.*, 22 Howard R., 406.) In Roland's case, 7 Wallace R., there was some evidence of occupation; but in this there is none.

This case, therefore, falls within the rule stated in White *vs.* The United States, 1 Wallace, p. 684:

"It has been held by this court, in a long and uninterrupted line of adjudications, that *when there is no archive evidence*, and its absence is unaccounted for, and there has been *no such possession as raises an equity*